DECISION

Number 137/PUU-XIII/2015

FOR THE SAKE OF JUSTICE BASED ON THE ONE AND ONLY GOD

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA

[1.1] Adjudicating the constitutional case at the first and final instance, handed its decision in the case of Review on the Law Number 23 of 2014 regarding the Local Government against the Constitution of the Republic of Indonesia of 1945, submitted by:

1. Name : **The Association of Indonesian District Governments (APKASI)**, in this case represented by the General Chairman, Mardani H. Maming, SH, M.Sos. and the Secretary General, Prof. Dr. Ir. H. Nurdin Abdullah, M.Agr.

   Address : Gedung International Finance Center, 18th Floor, Jalan Jenderal Sudirman Kav. 22-23, DKI Jakarta

   As---------- **the Petitioner I;**

2. Name : **The Regional Government of Batubara Regency, North Sumatra Province**, in this

case represented by the Regent of Batubara Regency, H. OK. Arya Zulkarnaen, S.H.,M.H. and the Chairman of the Batubara Regional House of People's Representatives (DPRD), Selamat Arifin, S.E., M.Si., and the Deputy Chairman of the Batubara Regional House of People's Representatives (DPRD), Drs. Suwarsono and Syafrizal

Address : -

As---------- **the Petitioner II**;

3. Name : **The Regional Government of Central Aceh Regency, Aceh Province** , in this case represented by the Regent of Central Aceh Regency, Ir. H. Nasaruddin, M.M.

Address : Jalan Yos Sudarso Number 10, Takengon

As---------- **the Petitioner III**;

4. Name : **The Regional Government of Muara Enim Regency, South Sumatra Province**, in this case represented by the Regent of Muara Enim Regency, Ir. H. Muzakir Sai Sohar

Address : Jalan A. Yani Number 16 Muara Enim

As---------- **the Petitioner IV**;

5. Name : **The Regional Government of Belitung**

Regency, Bangka Belitung Province, in this case represented by the Regent of Belitung Regency, H. Sahani Saleh, S.Sos.

Address : Jalan A. Yani Number 001 Tanjung Pandan

As---------- **the Petitioner V;**

6. Name : **The Regional Government of Merangin Regency, Jambi Province,** in this case represented by the Regent of Merangin Regency, Al Haris, S.Sos., M.H.

Address : Jalan Jenderal Sudirman Number 1 Bangko

As---------- **the Petitioner VI;**

7. Name : **The Regional Government of Tanjung Jabung Barat Regency, Jambi Province,** in this case represented by the Regent of Tanjung Jabung Barat Regency, Drs. H. Usman Ermulan, M.M.

Address : Jalan Jenderal Gatot Subroto Number 185 Kuala Tungkal

As---------- **the Petitioner VII;**

8. Name : **The Regional Government of East Lampung Regency, Lampung Province,** in this case represented by the Acting Regent of Lampung Regency, Drs. H. Tauhidi, M.M.

Address : Jalan Lintas Timur Sumatera Sukadana,

East Lampung

As---------- **the Petitioner VIII;**

9. Name : **The Regional Government of Tanggamus Regency, Lampung Province,** in this case represented by the Regent of Tanggamus Regency, H. Bambang Kurniawan

Address : Jalan Mayjend. S. Parman Number 1 Kota Agung

As---------- **the Petitioner IX;**

10. Name : **The Regional Government of Lebak Regency, Banten Province,** in this case represented by the Regent of Lebak Regency, Hj. Iti Octavia Jayabaya, SE., M.M.

Address : Jalan Abdi Negara Number 3 Lebak

As---------- **the Petitioner X;**

11. Name : **The Regional Government of West Bandung Regency, West Java Province,** in this case represented by the Regent of West Bandung Regency, Drs. H. Abu Bakar, M.Si.

Address : Jalan Raya Batujajar KM. 3.5 Number 46 Batujajar

As---------- **the Petitioner XI;**

12. Name : **The Regional Government of Majalengka Regency, West Java Province,** in this

case represented by the Regent of Majalengka, H. Sutrisno, S.E., M.Si.

Address : Jalan A. Yani Number 1, Majalengka

As---------- **the Petitioner XII;**

13. Name : **The Regional Government of Sukabumi City, West Java Province,** in this case represented by the Mayor of Sukabumi City, H. Mohamad Muraz, S.H., M.M. and the Chairman of the Regional House of People's Representatives (DPRD) of Sukabumi City, H. Mokh Muslikh Abdussyukur, S.H., M.Si. and the Deputy Chairman of the Regional House of People's Representatives (DPRD) of Sukabumi City, Tatan Kustandi and H. Kamal Suherman, S.H.

Address : Jalan R. Syamsudin, S.H. Number 25 Sukabumi

As---------- **the Petitioner XIII;**

14. Name : **The Regional Government of Banjarnegara Regency, Central Java Province,** in this case represented by the Regent of Banjarnegara Regency, H. Sutedjo Slamet Utomo, S.H., M.Hum. and the Chairman of the Regional House of People's

Representatives (DPRD) of Banjarnegara Regency, Drs. H. Saeful Muzad, M.M., and the Deputy Chairman of the Regional House of People's Representatives (DPRD) of Banjarnegara Regency, H. Bawono, S.Sos., M.M., Drs. H. Bambang Prawoto S. and Drs. H. Indrato

Address : Jalan A. Yani Number 16 Banjarnegara

As---------- **the Petitioner XIV**;

15. Name : **The Regional Government of Pati Regency, Central Java Province**, in this case represented by the Regent of Pati Regency, H. Haryanto, S.H., M.M.

Address : Jalan Tombronegoro Nomor 1, Pati

As---------- **the Petitioner XV**;

16. Name : **The Regional Government of Kulon Progo Regency, Yogyakarta Special Region Province**, in this case represented by the Regent of Kulon Progo Regency, dr. Hasto Wardoyo, Sp.OG (K)

Address : Jalan Perwakilan Nomor 1 Wates

As---------- **the Petitioner XVI**;

17. Name : **The Regional Government of Madiun Regency, East Java Province**, in this case

represented by the Regent of Madiun Regency, H. Muhtarom, S.Sos.

Address : Jalan Alun-Alun Utara Number 1-3 Mejayan, Madiun

As---------- **the Petitioner XVII**;

18. Name : **The Regional Government of Trenggalek Regency, East Java Province**, in this case represented by the Acting (PLH) Regent of Trenggalek Regency, Drs. Ali Mustofa

Address : Jalan Pemuda Number 1 Trenggalek

As---------- **the Petitioner XVIII**;

19. Name : **The Regional Government of Bangli Regency, Bali Province**, in this case represented by the Acting Regent of Bangli Regency, Dewa Gede Mahendra Putra, S.H., M.H.

Address : Jalan Brigjend. Ngurah Rai Number 30 Bangli

As---------- **the Petitioner XIX**;

20. Name : **The Regional Government of Kapuas Regency, Central Kalimantan Province**, in this case represented by the Regent of Kapuas Regency, Ir. Ben Brahim S. Bahat, M.M., M.T.

Address : Jalan Pemuda KM 5,5 Kuala Kapuas

As---------- **the Petitioner XX**;

21. Name : **The Regional Government of Bulungan Regency, North Kalimantan Province,** in this case represented by the Acting Regent of Bulungan Regency, Ir. H. Syaiful Herman M.AP.

Address : Jalan Jelarai, Tanjung Selor

As---------- **the Petitioner XXI**;

22. Name : **The Regional Government of North Gorontalo Regency, Gorontalo Province,** in this case represented by the Regent of North Gorontalo Regency, Indra Yasin, S.H., M.H.

Address : Jalan Kusnodonupoyo, Kantor Blok Plan Kantor Bupati, Kwandang

As---------- **the Petitioner XXII**;

23. Name : **The Regional Government of Sumbawa Regency, West Nusa Tenggara Province,** in this case represented by the Acting Regent of Sumbawa Regency, Drs. H. Jamaluddin Malik

address : Jalan Garuda Number 1 Sumbawa Besar

As---------- **the Petitioner XXIII**;

24. Name : **The Regional Government of Serdang Bedagai Regency, North Sumatra Province,** in this case represented by the Acting Regent of Serdang Bedagai Regency, Ir. H. Alwin, M.Si.

Address : Jalan Negara Number 300 Sei Rampah

As---------- **the Petitioner XXIV;**

25. Name : **The Regional Government of Lamandau Regency, Central Kalimantan Province,** in this case represented by the Regent of Lamandau Regency, Ir. Marukan, M.AP.

Address : Jalan Tjilik Riwut Number 10 Nanga Bulik

As---------- **the Petitioner XXV;**

26. Name : **The Regional Government of Cilacap Regency, Central Java Province,** in this case represented by the Regent of Cilaca Regency, H. Tatto Suwarto Pamuji

Address : Jalan Jend. Sudirman Number 32 Cilacap

As---------- **the Petitioner XXVI;**

27. Name : **The Regional Government of Tangerang Regency, Banten Province,** in this case represented by the Regent of Tangerang Regency, Ahmed Zaki Iskandar, B.Bus., S.E.

Address : Kompleks Perkantoran Pemda Tiga Raksa, Tangerang

As---------- **the Petitioner XXVII;**

28. Name : **The Regional Government of Nias Regency, North Sumatra Province**, in this case represented by the Regent of Nias Regency, Drs. Sokhiatulo Laoli, M.M.

Address : Jalan Pelud Binaka Km. 9 Gunung Sitoli Selatan

As---------- **the Petitioner XXVIII;**

29. Name : **The Regional Government of Southeast Minahasa Regency, North Sulawesi Province**, in this case represented by the Regent of Southeast Minahasa Regency, James Sumendap, S.H.

Address : Jalan Raya Ratahan Belang, Kelurahan Pasan, Kecamatan Ratahan

As---------- **the Petitioner XXIX;**

30. Name : **The Regional Government of Kolaka Regency, Southeast Sulawesi Province**, in this case represented by the Regent of Kolaka Regency, H. Ahmad Safei, S.H. and the Chairman of the Regional

House of People's Representatives (DPRD) of Kolaka Regency, H. Parmin Dasir, S.E. and the Deputy Chairman of Regional House of People's Representatives (DPRD) of Kolaka Regency, Sudirman and Drs. H. Suaib Kasra

Address : Jalan Pemuda Number 118 Kolaka

As---------- **the Petitioner XXX**;

31. Name : **The Regional Government of Sarolangun Regency, Jambi Province**, in this case represented by the Regent of Sarolangun Regency, Drs. H. Cek Endra

Address : Kompleks Perkantoran Gunung Kembang Number 01 Sarolangun, Jambi

As---------- **the Petitioner XXXI**;

32. Name : **The Regional Government of Sigi Regency, Central Sulawesi Province**, in this case represented by the Regent of Sigi Regency, Ir. H. Aswadin Randalembah, M.Si.

Address : Jalan Lasoso Number 10 Sigibiromaru

As---------- **the Petitioner XXXII**;

33. Name : **The Regional Government of Konawe Regency, Southeast Sulawesi**, in this case

represented by the Regent of Konawe Regency, Kerry Saiful Konggoasa

Address : Jalan Inolobunggadue, Konawe

As---------- **the Petitioner XXXIII;**

34. Name : **The Regional Government of Sidoarjo Regency, East Java Province,** in this case represented by the Regent of Sidoarjo Regency, H. Saiful Ilah, S.H., M.Hum.

Address : Jalan Gubernur Suryo Number 1 Sidoarjo

As---------- **the Petitioner XXXIV;**

35. Name : **The Regional Government of Dairi Regency, North Sumatra Province,** in this case represented by the Regent of Dairi Regency, Irwansyah Pasi, S.H.

Address : Jalan Sisingamangaraja Number 127 Sidikalang

As---------- **the Petitioner XXXV;**

36. Name : **The Regional Government of South Lampung Regency, Lampung Province,** in this case represented by the Acting Regent of Lampung Regency, H. Kherlani, S.E., M.M.

Address : Jalan Zainal Abidin Pagaralam Number 1 Kalianda, South Lampung

As---------- **the Petitioner XXXVI;**

37. Name : **The Regional Government of Kupang Regency, East Nusa Tenggara Province,** in this case represented by the Regent of Kupang Regency, Drs. Ayub Titu Eki, M.S., Ph.D.

Address : Jalan Soekarno Number 18 Kupang

As---------- **the Petitioner XXXVII;**

38. Name : **The Regional Government of Central Sumba Regency, East Nusa Tenggara Province,** in this case represented by the Regent of Central Sumba Regency, Drs. Umbu Sappi Pateduk

Address : Jalan Cepi Watu, Toka Borong

As---------- **the Petitioner XXXVIII;**

39. Name : **The Regional Government of East Lombok Regency, West Nusa Tenggara Province,** in this case represented by the Regent of East Lombok Regency, Dr. H. Moh. Ali B. Dahlan, S.H., M.H.

Address : Jalan Prof. M. Yamin Number 57 NTB

As---------- **the Petitioner XXXIX;**

40. Name : **The Regional Government of Balangan Regency, South Kalimantan Province,** in this case represented by the Acting

Regent of Balangan Regency, H. M. Hawari

Address : Jalan Jend. A. Yani Paringin

As---------- **the Petitioner XL;**

41. Name : **The Regional Government of South Tapanuli Regency, North Sumatra Province,** in this case represented by the Acting Regent of South Tapanuli Regency, Dr. H. Sarmadan Hasibuan, S.H., M.M.

Address : Jalan Kenanga Number 74 Padang Sidempuan

As---------- **the Petitioner XLI;**

42. Name : **The Regional Government of Magetan Regency, East Java Province,** in this case represented by the Acting Regent of Magetan Regency, Samsi

Address : Jalan Basuki Rahmat Number 1 Magetan

As---------- **the Petitioner XLII;**

43. Name : **The Regional Government of Tabanan Regency, Bali Province,** in this case represented by the Acting Regent of Tabanan Regency, I Wayan Sugiada, S.H., M.H.

Address : Jalan Pahlawan Number 19 Tabanan

As---------- **the Petitioner XLIII;**

44. Name : **The Regional Government of Batang**

Regency, Central Java Province, in this case represented by the Deputy Regent of Batang Regency, Soetadi, S.H., M.M.

Address : Jalan R. A. Kartini Number 1 Batang

As---------- **the Petitioner XLIV;**

45. Name : **The Regional Government of Sumedang Regency, West Java Province,** in this case represented by the Deputy Regent of Sumedang Regency, Ir. H. Eka Setiawan, Dipl. S.E., M.M

Address : Jalan Prabu Geusan Ulun Number 36 Sumedang

As---------- **the Petitioner XLV;**

46. Name : **The Regional Government of Soppeng Regency, South Sulawesi Province,** in this case represented by the Deputy Regent of Soppeng Regency, H. Aris Muhammadia

Address : Jalan Saletungo Lalabata Rilau, Soppeng

As---------- **the Petitioner XLVI;**

47. Name : **Ibnu Jandi, S.Sos., M.M.**

Address : Jalan Al Muhajirin RT/RW 002/009 Kelurahan Tanah Tinggi, Kecamatan Tangerang, Tangerang City

As---------- **the Petitioner XLVII;**

Based on the Special Power of Attorney, respectively dated September 14, 2015, October 7, 2015, October 9, 2015, October 12, 2015, October 14, 2015, November 30, 2015, December 1, 2015, December 4, 2015 and January 6, 2016 granting the power of attorney to **Andi Syafrani, S.H., MCCL., Muhammad Ali Fernandez, S.HI., M.H., Irfan Zidny, S.H., S.Ag., M.Si., Fazlur Rahman, S.H., M.H., Yupen Hadi, S.H.,** and **Rivaldi Guci, S.H.,** Lawyers, Advocates and Legal Consultants under the Legal Team of the Association of Indonesian District Governments (APKASI), having its address at Secretariat APKASI, Gedung International Finance Center,18th Floor, Jalan Sudirman Kav. 22-23, DKI Jakarta, acting individually or jointly for and on behalf of the Principal;

Hereinafter referred to as---------- **the Petitioners**;

[1.2] Reading the petition of the Petitioners;

Listening to the testimony of the Petitioners;

Listening to and reading the testimony of the President;

Listening to and reading the testimony of the Regional Representative Council;

Listening to the testimony of the witnesses and experts of the Petitioners;

Examining letter/written evidences submitted by the Petitioners;

Reading the conclusion of the Petitioners.

2. **FACTS OF THE CASE**

[2.1] Considering whereas the Petitioners have proposed a petition dated October 23, 2015 which was received at the Office of the Clerk of the Constitutional Court (hereinafter referred to as the Office of the Clerk of the Court) on October 23, 2015 based on the Deed of Receipt of Dossier of the Case Number 277/PAN.MK/2015 a and registered in the Book of Registry of Constitutional Cases on November 11, 2015 under Number 137/PUU-XIII/2015, which has been corrected and accepted at the Office of the Clerk of the Court on December 4, 2015, in essence describing the following matters:

I. INTRODUCTION

REGIONAL AUTONOMY IS MANDATE OF REFORM AND MECHANISM OF MAINTANING THE INTEGRITY OF THE UNITARY STATE OF THE REPUBLIC OF INDONESIA (NKRI)

One of important milestones in the journey of the nation and the State of the Republic of Indonesia is the reformation that took place in 1998. The cry of reform echoed by students and all components of the nation has given birth to an order that replaced the authoritarian regime and gave birth to many fundamental changes in politics and state administration along with changes in the

Constitution as a concrete manifestation of these demands. One of the results of the reform is the birth of the constitutional guard institution, namely the Constitutional Court which is explicitly contained in Article 24C through the Third Amendment to the 1945 Constitution.

In addition, several key issues which have emerged from the reform are the birth of the Regional Representative Council as a special representative voicing the regional interests (vide Article 22C of the 1945 Constitution), Direct General Election for the President and Vice President conducted by the General Election Commission (vide Article 22E of the 1945 Constitution), Establishment of the Judicial Commission (vide Article 24B of the 1945 Constitution), special provisions on regional autonomy (vide Article 18, Article 18A and Article 18B of the 1945 Constitution), and protection of human rights (vide Article 28, Article 28A-28J of the 1945 Constitution). All of these changes would never have existed without the reform process that took place in 1998.

Freedom and the various hubbubes of democracy through state and non-governmental institutions which are felt today, shall be recognized as the results and outcome of the reform struggle, regardless of any assessment and evaluation from many parties on the current reform journey. This results shall be guarded and maintained because there

may still be many of these results that are not appropriate and achieved as idealized. Because what is referred to as a result is essentially a continuous process and never stops in the life of the nation and state.

One of processes which is particular concern here is related to the implementation of clear and decisive regional autonomy is both a demand and a solution to the problem of centralism which is very powerful in controlling the national life in the New Order era.

The regional autonomy at that time is also a mechanism of security and guardian of the integrity of the Unitary State of the Republic of Indonesia in the midst of the very strong threat of disintegration from several regions such as such as Aceh, Papua, and East Timor. Except for East Timor, the Unitary State of the Republic of Indonesia is intact with the formation of Law Number 18 of 2001 regarding Special Autonomy for Aceh Special Region Province as Nanggroe Aceh Darussalam Province and the Law Number 21 of 2001 regarding Special Autonomy for Papua Province.

The importance of regional autonomy as one of the issues and instruments of reform can be seen from the objectives of the Decree of the People's Consultative Assembly (MPR) Number XV/MPR/1998 regarding "Implementation of Regional Autonomy, Arrangement, Allocation and Utilization of Equitable National Resources, as well as

Balance of Central and Regional Power in the Framework of the Unitary State of the Republic of Indonesia" set forth in Article 6 as follows:

"Implementation of regional autonomy; arrangement, allocation and utilization of equitable national resources; and balance of the central and regional finances ***in the framework of maintaining and strengthening*** *the Unitary State of the Republic of Indonesia is carried out based on the principle of sustainability democracy which is strengthened by the supervision of the Regional House of People's Representatives and the community".*

The implementation of regional autonomy during the New Order era using Law Number 5 of 1974 regarding Principles on Regional Government has resulted in the accumulation of power at the center and weakening of the region in development. The very strong control of the central government created a very strong dependency on the regional government, and in turn created a very clear development gap between the center and the regions.

Weaknesses in this Law have caused a fluctuation in reform from the regions and then responded with the issuance of Decree of the People's Consultative Assembly (MPR) Number XV/MPR/1998, and subsequently realized through the birth of Law Number 22 of 1999 regarding Regional

Government and Law Number 25 of 1999 regarding Balance of Finance Between Central and Regional Governments.

These two laws are the product of reforms related to regional autonomy and seen as one of the peak phases of granting very strong decentralization to the regions due to their emphasis on regional autonomy in regencies and cities. However, the politics of regional autonomy law gradually shifted and changed, and then in the following five years Law Number 32 of 2004 was issued which replaced the Law Number 22 of 1999.

In the course of national history, the problem of granting autonomy to the regions or at least the problem of central-regional relations is an essential part of the state administration. Even in the historical record of Indonesian law, the first legislation product made after independence was the Law on regional governance as stipulated in the Law Number 1 of 1945 regarding "Position of Regional National Committees". And dynamically the affairs of the central-regional power relations were changing as can be seen from several legal products of the Law which was born later, namely the Law Number 22 of 1948, the Law Number 1 of 1957, President Regulation (Perpres) Number 6 of 1959, President Regulation (Perpres) Number 5 of 1960, Law number 5 of 1974, Law number 22 of 1999, and Law number 32 of 2004.

Commitment regarding regional autonomy as "presenting of Indonesian pluralism" has even existed since the day of the Dutch East Indies. During the Dutch colonial period, the granting of regional autonomy was carried out along with the failure of the ethic politics implemented by the Government of Dutch East Indies. Ethic politics was intended to improve the intelligence and social life of the Indonesian people by building acculturation between the Indonesia people and the Netherlands. But in reality, ethic politics was precisely the way for the birth of national movements. To break the concentration of the national movement, regional autonomy was granted. In the 1903 *Regeringgreglement* (Administrative Law) was granted autonomy to the regions by applying the principle of decentralization, where previously the regions were only administrative in nature namely *gewesten* (regions), *afdelingen* (parts) and *onderafdelingen* (districts) which were under the authority of Europian bestuurnaren or resident, assistant resident and countroleur. During this period the Decentralization Law (*decentralisatiewet*) of 1903 provided an opportunity to form autonomous regions in Indonesia outside the autonomous regions that were declared based on customary law and had already existed. (**Amrah Muslimin**, *Ichtisar Perkembangan Otonomi Daerah 1903-1958*, Jakarta: Penerbit Djambatan, 1959, page 8-21.)

In various Constitutions that have been and are currently in force in Indonesia, namely the Constitution of the Republic of Indonesia (the 1945 Constitution), the Constitution of the Republic of the United States of Indonesia (RIS), the Provisional Constitution of 1950, up to the 1945 Constitution the results of changes known as the Constitution of the Republic of Indonesia (NRI) of 1945, the granting of regional autonomy also continued to be imprinted as the commitment of the nation's founders. Provisions governing the relationship between the central and regional government in the 1945 Constitution were contained in Chapter VI regarding Regional Government Article 18 of the 1945 Constitution which states: "*The division of Indonesian regions into large and small regions, with the form of government structure determined by law, by looking and remembering the basis of deliberations in the system of state government, and the rights of origin in special regions*".

Provisions concerning the same thing were also reflected in several provisions in the Constitution of the Republic of the United States of Indonesia (UUD RIS), especially in Chapter II which regulated relations between the Republic of the United States of Indonesia and the States. The Constitution of the Republic of the United States of Indonesia (UUD RIS) was the second constitution

in force in Indonesia between the period of December 27, 1949 and August 17, 1950. The Constitution of the Republic of the United States of Indonesia (UUD RIS) adhered to the form of a federal state for Indonesia, this differed from the affirmation of the form of a unitary state in another constitution. Therefore, the division of power between the central government (federal) and regional government (part) was divided very clearly and firmly as stipulated in the constitutions of countries that embraced federalism.

In addition, another character of the Constitution of the Republic of the United States of Indonesia (UUD RIS) relating to regions was the people's initiative and will in the states at that time was clearly accommodated. This can be seen from the provisions of Article 42 of the Constitution of the Republic of the United States of Indonesia which states: "*In completing the composition of the federation of the Republic of the United States of Indonesia, the principles shall apply, that the will of the people in the relevant regions declared independent by democratic means, decided the status of the end to be occupied by regions that the independent will was in the federation".*

Other provisions can be traced in Article 47 of the Constitution of the Republic of the United States of Indonesia (UUD RIS) which states: "*The state constitutional*

regulations shall guarantee the right of the people's life themselves to various community groups in their regional environment and shall also make the possibility to manifest it nationally with the rules regarding the formation of the groups were democratically in autonomous regions".

Arrangement regarding the distribution of central and regional powers based on autonomy can also be seen from the provisions of the Provisional Constitution of 1950 which took effect from August 17, 1950 to July 5, 1959. The Provisional Constitution of 1950 embraced again the form of a unitary state. This certainly affected the pattern of relations between the central and regional governments, and distinguished them in contrast to the provisions in the Constitution of the Republic of the United States of Indonesia (UUD RIS) which applied previously. Article 131 of the Provisional Constitution of 1950 states:

(1) *The division of Indonesian territory into large and small areas that have the right to manage their own household (*autonoom*), with the form of government structure determined by law, by considering and observing the basis of deliberations and the basis of representation in the state government system.*

(2) *The regions are given the autonomy as broad as possible to manage their own households.*

(3)By law, the implementation of duties may be assigned to regions not included in the household affairs.

From the arrangement of all the Constitutions that we have adopted, namely the 1945 Constitution, the Constitution of the Republic of the United States of Indonesia (UUD RIS), and the Provisional Constitution of 1950, the arrangement regarding the division of the central and regional governments power based on regional autonomy in these constitutions shows how regional autonomy is an important aspect in the administration of Indonesian state administration. According to **Ibnu Tricahyo**, the debate in the formation of the manuscript in each of these constitutions, it appears that regional autonomy is an aspect of state administration that is given a strategic weight (Ibnu Tricahyo,"*Pengaturan Pemisahan Pemilu Nasional dan Lokal Dalam Rangka Penyelenggaraan Otonomi Daerah Yang Demokratis",* Disertasi, Malang : Universitas Brawijaya, 2007, page 3).

From various dynamics and continual changes, the provisions regarding central relations and regional government, it can be concluded that the affairs of regional government are one of the crucial elements that sustain and support the achievement of the national ideals, and even become the main tool to maintain the integrity of the Unitary State of the Republic of Indonesia.

LEGAL POLITICS OF LAW NUMBER 23 OF 2014

Law Number 23 of 2014 regarding Regional Government was born in response to the implementation of Law Number 32 of 2004, other than as an effort to break up parts of the previous Law which contained several provisions regarding the Election of Regional and Village Heads. For this reason, the presence of Law Number 23 of 2014 coincides with the ratification of the two Laws regarding the other two matters, namely Law Number 22 of 2014 regarding the Election of Governors, Regents and Mayors, and Law Number 6 of 2014 regarding Villages.

In its discussion, Law Number 23 of 2014 regarding Regional Government is discussed in a package or at least together with Law Number 22 of 2014 regarding the Election of Governors, Regents and Mayors because these two Laws contain substance that is bound and integrated.

Both of these laws are the product of government proposal submitted to the People's Representative Council (DPR), which in its initial journey, the basic assumptions that are built related to the mechanism of regional head election in these two Laws are the indirect election model, where the Governor is placed as the extension of the central government in the region.

In contrast to the Law Number 23 of 2014, Law Number 22 of 2014 received a very broad public response because it

has a very strategic and “sexist” political issue, namely direct regional head election. The pros and cons of this election issue sticking out in the mass media and becoming a national issue, even for its ratification in the Plenary meeting of the People’s Representative Council (DPR) became a serious spotlight that led to the voting of the members of the People’s Representative Council (DPR) in the meeting.

Because it has become national and even international concern, upon the arrival of President Susilo Bambang Yudhoyono (SBY) from an official trip to foreign countries, SBY immediately responded to this issue, and then issued the Presidential Regulation in lieu of Law (Perpu) Number 1 of 2014 replacing Law Number 22 of 2014 regarding the election of regional heads, which in essence changed the rules for the election of regional heads from indirectly through the Regional House of People’s Representatives (DPRD) to direct election as the previous rule in Law Number 32 of 2004 and its amendments.

The series of legal political drama changes to the Law Number 22 of 2014 does not occur in Law Number 23 of 2014, even though both of the Laws are the same products. The absence of broad public attention politically through the mass media against Law Number 23 of 2014 resulted in this Law as losing soul and spirit. When the Law Number 22 of

2014 has been returned to the spirit of the direct people involvement in the election of regional heads not through representation - the implementation of regional government is still stagnant and is bound by the indirect paradigm, namely the spirit of control and central representation in the regions.

Formally, the amendment to Law Number 22 of 2014 through the Presidential Regulation in lieu of Law (Perppu) Number 1 of 2014 which was subsequently stipulated to be Law through Law Number 1 of 2015 in conjunction with Law Number 8 of 2015 forced Law Number 23 of 2014 to be amended, namely by issuing the Presidential Regulation in lieu of Law (Perppu) Number 2 of 2014 which was later stipulated to become Law Number 2 of 2015 and amended again by Law Number 9 of 2015. Every amendment to the Law on the election of regional heads is always followed by amendment to the Regional Government Law. However, the amendment is only formal, namely only related to changes in terms and technical and nomenclature in the Law on the election of regional heads, has not touched the essential amendment related to the spirit and soul of the direct election of regional heads, namely regional autonomy.

It is these main points which encourage the Petitioners to submit Judicial Review of Law Number 23 of 2014 regarding Regional Government before the

Constitutional Court to reconsider the importance of regional autonomy as described above.

The full basics and principles of the Petitioners' petition are as follows:

II. AUTHORITY OF THE COURT

1. Whereas based on Article 24C paragraph (1) of the 1945 Constitution, Article 10 paragraph (1) letter a of Law Number 24 of 2003 regarding the Constitutional Court as amended by Law Number 8 of 2011 regarding Amendment to the Law Number 24 2003 regarding the Constitutional Court (State Gazette of the Republic of Indonesia of 2011 Number 70, Supplement to the State Gazette of the Republic of Indonesia Number 5226, hereinafter referred to as the Constitutional Court Law (UU MK)), Article 29 paragraph (1) letter a of Law Number 48 of 2009 regarding Judicial Power (State Gazette of the Republic of Indonesia Number 157 of 2009, Supplement to the State Gazette of the Republic of Indonesia Number 5076), one of the authorities of the Court is to adjudicate at the first and last instance the decision is final to review the Law on the 1945 Constitution;
2. Whereas Article 24 Paragraph (2) of the 1945 Constitution (hereinafter referred to as the 1945 Constitution) states, "Judicial power is exercised by a Supreme Court and the Judiciary Agency underneath it in the General Courts, the

Religious Courts, the Military Courts, the State Administrative Courts, and by a Constitutional Court".

3. Whereas the object of the Petition filed by the Petitioners is Law Number 23 of 2014 with the provisions of the following articles:
   a. Article 9 paragraph (1), paragraph (2), paragraph (3), paragraph (4), and paragraph (5);
   b. Article 11 paragraph (1), paragraph (2), and paragraph (3);
   c. Article 12 paragraph (1), paragraph (2), and paragraph (3);
   d. Article 13 paragraph (1), paragraph (2), paragraph (3), and paragraph (4);
   e. Article 14 paragraph (1), paragraph (2), paragraph (3), and paragraph (4);
   f. Article 15 paragraph (1), paragraph (2), paragraph (3), paragraph (4), and paragraph (5);
   g. Article 16 paragraph (1) and paragraph (2);
   h. Article 17 paragraph (1), paragraph (2), and paragraph (3);
   i. Article 21;
   j. Article 27 paragraph (1) and paragraph (2);
   k. Article 28 paragraph (1) and paragraph (2);
   l. Article 251 paragraph (2), paragraph (3), paragraph (8), and paragraph (4) as long as the phrase

"*cancellation of Regency/City Regulation and Regent/Mayor regulation as referred to in paragraph (2) shall be stipulated by the Governor's decision as representative of the Central Government*";

all of which are articles in the Law Number 23 of 2014 regarding Regional Government.

Therefore, the petition of the Petitioners is included in one of the authorities in adjudicating the Constitutional Court which is to review the material of the Law against the 1945 Constitution.

III. THE LEGAL STANDING OF THE PETITIONERS

4. Whereas Article 51 Paragraph (1) of the Constitutional Court Law and its elucidation states that:

"*The Petitioners are parties who consider their Constitutional rights and/or authorities to be impaired by the coming into effect of the Law, namely:*

a. individual of Indonesian citizen;

b. customary law community unit as long as it is still alive and in accordance with the development of the community and the principles of the Unitary State of the Republic of Indonesia regulated in the Law;

c. public or private legal entities;

d. state institution";

5. Whereas furthermore, the Constitutional Court in decision Number 006/PUU-III/2005 and Decision Number

11/PUU-V/2007 have been decided 5 (five) conditions of constitutional rights and/or authority impairment as referred to in Article 51 paragraph (1) of the Constitutional Court Law, as follows:

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

6. Whereas the Petitioners consist of Institution of the Association of Indonesian District Governments (APKASI), Regents (Regional Head of Regency) and Mayor (Regional Head of City) who are Regional Government and Regency/City Government and Individuals as follows:

1) **The PETITIONER I, the Association of Indonesian District Governments (APKASI),** based on the Deed Number 15 dated October 3, 2005 and subsequent Amendments Deed, especially Amendment Deed Number 43 dated October 19, 2015 before the Notary Aryanti Artisari, S.H., M.Kn. concerning the "Statement of the National Deliberation Decision of the Association of Indonesian District Governments (APKASI)", represented by **Mardani H. Maming, SH., M.SOS** as **General Chairman** and **Prof. Dr. Ir. Nurdin Abdullah, M.SC., as Secretary General**, in which according to Article 13 paragraph (1) letter g and paragraph (3) letter j of the latest Articles of Association of the APKASI in 2015, the General Chairman and the Secretary General of the Association of Indonesian District Governments have the right to represent the interests, vision, functions, and main duties of APKASI inside and outside the Court, therefore **Mardani H. Maming, SH., M.Sos.** as **General Chairman** and **Prof. Dr. Ir. Nurdin Abdullah, M.SC., as Secretary General**, are valid and have the right to represent the Association of Indonesian District Governments;

Whereas APKASI is the only place for association of Regents as regional head of regencies in Indonesia with legal status, where ex-officio members and daily

executive board are people who hold as Regents, as stipulated in the provisions of Article 9 of the Articles of Association of APKASI which reads "*APKASI members are all Indonesian District Governments based on passive system* (*stelsel pasif*)", in conjunction with Article 1 of the Articles of Association of APKASI which reads: "*APKASI members are all Indonesian district governments whose representation is represented by the regents",* and Article 10 of the Articles of Association of APKASI which reads*:* "*The requirements to become a member of the APKASI board are: a) the regent who is still in office; b) have a commitment to implement the Articles of Association; c) have a commitment to improve APKASI and take the time and be able to actively carry out the duties and functions of the management board; and d) willing to work collectively;*

Based on Article 5 of the Articles of Association, APKASI has a vision, namely: "*the realization of the implementation of regional autonomy as widely as possible in order to achieve national goals in the Unitary State of the Republic of Indonesia as mandated by the 1945 Constitution of the Unitary State of the Republic of Indonesia*";

In Article 7 of the Articles of Association, APKASI has the main duty to "*facilitate the interests of district governments in the implementation of regional autonomy through the role of advocacy, mediation and facilitation with state, government and non-government institutions, both from within and outside the country in accordance with applicable laws and regulations*";

Whereas according to Article 8 letter b of the Articles of Association, it is stated that APKASI "*functions as a facilitator in fighting for the interests and aspirations of the region to the government*". Where based on Article 51 of Law Number 24 of 2003 which can submit application for judicial review is a public or private "legal entities", APKASI as a legal entity is required to submit application for judicial review to the Constitutional Court;

Therefore, the position of the Petitioner I can be likened to an individual citizen, and therefore he has constitutional rights granted by the 1945 Constitution, including being the Petitioner in Material Review as stated in Law 24 of 2003 regarding the Constitutional Court;

2) **THE PETITIONER II, THE PETITIONER XIII, THE PETITIONER XIV, and THE PETITIONER XXX, namely the Regional**

Government consisting of Regent and Chairman of the Regional House of People's Representatives and/or City:

1) **THE PETITIONER II is the Regional Government of Batu Bara Regency, North Sumatra Province,** in this case represented by **H. OK Arya Zulkarnaen, S.H., M.H.** as the **Regent of Batu Bara** based on the Decree of the General Election Commission of Batu Bara Regency Number 22/Kpts/KPU-Kab-002.964812/2013 dated September 27, 2013 regarding "Determination of Candidate Pair of Regent and Deputy Regent of Batu Bara Regency Elected in the General Election of Regent and Deputy Regent of Batu Bara Regency in 2013", and the Regional House of People's Representatives (DPRD) of Batu Bara represented by **Selamat Arifin, SE, M.Si.** as **Chairman of the Regional House of People's Representatives (DPRD) of Batu Bara Regency, Drs. Suwarsono** and **Syafrizal** as **Deputy Chairman of the Regional House of People's Representatives (DPRD) of Batu Bara Regency** based on the Decree of the Regional House of People's Representatives of Batu Bara Regency Number 17/K/DPRD/2014 dated December 24, 2014 regarding "Determination of Candidate Names for the Chairman of the the Regional House of People's Representatives of Batu Bara Regency for the period

of 2014-2019, therefore they are legal to represent and act on behalf of the Regional Government of Batu Bara Regency;

2) **THE PETITIONER XIII is the Regional Government of Sukabumi City, West Java Province,** in this case represented by **H. Mohamad Muraz, S.H., M.M.** as **Mayor of Sukabumi,** domiciled at Jalan R. Syamsudin SH, Number 25 Sukabumi, based on the Decree of the General Election Commission of Sukabumi City Number 15/Kpts/KPU.Kosi-011.329150/2013 dated March 1, 2013 regarding "Determination of Candidate Pair of Mayor and Deputy Mayor Elected in the Election of Mayor and Deputy Mayor of Sukabumi in 2013" and Extract of Decree of the Ministry of Home Affairs of the Republic of Indonesia Number 131.32-2856 of 2013 dated April 25, 2013 regarding "Ratification of Appointment of the Mayor of Sukabumi, West Java Province", and Chairman of the Regional House of People's Representatives of South Sukabumi City, represented by **H. Mokc Muslich Abdul Syukur, SH., M.Si** as Chairman of the Regional House of People's Representatives of Sukabumi City, **Tatan Kustandi** and **H. Kamal Suherman, SH** as Deputy Chairman of the Regional House of People's Representatives of Sukabumi City based on the Degree of Governor of

West Java Number 170/Kep.1341-Pem.Um/2014, dated September 25, 2014, regarding Inauguration of Appointment of the Chairman of the Regional House of People's Representatives of Sukabumi City for the Period of 2014 - 2019, therefore they are legal to represent and act on behalf of the Regional Government of Sukabumi City;

3) **THE PETITIONER XIV is the Regional Government of Banjarnegara Regency, Central Java Province,** in this case represented by **H. Sutedjo Slamet Utomo, S.H., M.Hum.** as **Regent of Banjarnegara,** domiciled at Jalan A. Yani Number 16 Banjarnegara, based on Decree of the General Election Commission of Banjarnegara Regency Number 41/Kpts/KPU-Kab-012.329402/2011 dated September 28, 2011 regarding "Determination of Candidate Pair of Regent and Deputy Regent Elected in the General Election of Regent and Deputy Regent of Banjarnegara" and Extract of Decree of the Ministry of Home Affairs of the Republic of Indonesia Number 131.33-693 of 2011 dated September 28, 2011 regarding "Ratification of the Termination and Endorsement of the Appointment of Regent of Banjarnegara, Central Java Province", and Chairman of the Regional House of People's Representatives of Banjarnegara Regency, represented by **Drs. H. Saeful**

Muzad, MM as Chairman of the Regional House of People's Representatives of Banjarnegara Regency and **H. Bawono, S.Sos, MM, Drs. H. Bambang Prawoto S** and **Drs. H. Indarto** as Deputy Chairman of the Regional House of People's Representatives of Banjarnegara Regency, based on the Minutes Number 170/55/Tahun 2015, dated November 30, 2015 regarding the Chairman Meeting of the Regional House of People's Representatives of Banjarnegara Regency on Approval of the Judicial Review of the Law Number 23 of 2014 regarding Regional Government to the Constitutional Court which is essentially together with the Regent of Banjarnegara agreed to jointly be the Petitioner for the Judicial Review of the Law Number 23 of 2014 regarding Regional Government to the Constitutional Court (and its attachments), therefore they are valid and legally appropriate to act on behalf of the Regional Government of Banjarnegara Regency;

4) **THE PETITIONER XXX is the Regional Government of Kolaka Regency, Southeast Sulawesi Province**, in this case represented by **H. Ahmad Safei, SH.**, as Regent of Kolaka, domiciled at Jl. Pemuda Number 118, Kolaka, based on Decree of the General Election Commission of Kolaka Regency Number 63/Kpts/KPU.Kab-027.4333557/Tahun 2013, dated October 26, 2013

regarding "Determination of Selected Candidate Pair of Regent and Deputy Regent of Kolaka for the period of 2014 - 2019 in the General Election of Regent and Deputy Regent of Kolaka in 2013" and Extract of Decree of the Ministry of Home Affairs of the Republic of Indonesia Number 131.74 - 8064 of 2013 dated December 31, 2013 regarding "Ratification of Appointment of Regent of Kolaka, Southeast Sulawesi Province", and the Regional House of People's Representatives of Kolaka Regency, represented by **H. Parmin Dasir, SE** as Chairman of the Regional House of People's Representatives of Kolaka Regency, **Sudirman** and **Drs. H. Suaib Kasra** as Deputy Chairman of the Regional House of People's Representatives of Kolaka Regency, based on the Minutes of Plenary Number 170/739/2015, dated December 1, 2015, regarding the Plenary Meeting on Approval of the Judicial Review of the Law Number 23 of 2014 regarding Regional Government to the Constitutional Court (and its attachments), therefore they are legal and appropriate to act on behalf of the Regional Government of Kolaka Regency;

THE PETITIONER II, THE PETITIONER XIII, THE PETITIONER XIV, and THE PETITIONER XXX are legal parties representing and acting on behalf of the Regency and

City Governments of each region as stipulated in Article 1 paragraph (2) of Law Number 23 of 2014 which reads: "*Regional Government is the administration of government affairs by the Regional Government and the Regional House of People's Representatives according to the principle of autonomy and co-administration task with the principle of the broadest autonomy in the system and principles of the Unitary State of the Republic of Indonesia as referred to in the 1945 Constitution*".

Whereas individually, Regent of Batu Bara, Mayor of Sukabumi, Regent of Banjarnegara and Regent of Kolaka as the Regional Government have the right to act on behalf of their region inside and outside the court based on Article 1 paragraph (3) juncto Article 65 paragraph (1) letter e the Law Number 23 of 2014 regarding Regional Government, which asserts that the Regional Government is the regional head as an element of the Regional Government administrator who "*has the duty and authority to represent the region inside and outside the Court, and can appoint his/her legal attorney to represent him/her in accordance with laws and regulations*";

Collectively with the Chairman of the Regional House of People's Representatives (DPRD), Regent of Batu Bara,

Mayor of Sukabumi, Regent of Banjarnegara and Regent of Kolaka became the Regional Government of Batu Bara Regency, the Regional Government of Sukabumi City, the Regional Government of Banjarnegara Regency, the Regional Government of Kolaka Regency, which constitutes an integrated element of regional government administrator attached to him/her the authority of the regional government;

In this case, the Regional Government of Batu Bara Regency, the Regional Government of Sukabumi City, the Regional Government of Banjarnegara Regency, the Regional Government of Kolaka Regency have legal standing and has the right to submit application for Review of the Law Number 23 of 2014 regarding the Regional Government to the Constitutional Court;

3) **THE PETITIONER III up to THE PETITIONER XII, THE PETITIONER XV up to THE PETITIONER XXIX and THE PETITIONER XXXI up to THE PETITIONER XLVI, consisting of Regional Government/Regional Head, namely:**

   1) **The Regional Government of Central Aceh Regency, Aceh Province,** domiciled at Jalan Yos Sudarso Number 10, Takengon, based on Decree of the Independent Election Commission of Central Aceh Regency Number 67/Kpts/KIP-AT-001.434492/2012 dated May 15, 2012 regarding "Determination of Candidate Pair of Regent

and Deputy Regent Elected in the General Election of Regent and Deputy Regent in Central Aceh Regency in 2012" and Decree of the Ministry of Home Affairs of the Republic of Indonesia Number 131.11-512 of 2012 dated August 3, 2012 regarding "Termination of Acting Regent of Central Aceh and Ratification of Appointment of the Regent of Central Aceh, Aceh Province" hence **Ir. H. Nasaruddin, M.M.** as **Regent of Central Aceh** is valid and legally appropriate to act on behalf of the Reginal Government of Central Aceh Regency.

2) **The Regional Government of Muara Enim Regency**, South **Sumatera Province**, domiciled at Jalan A. Yani Number 16, based on Decree of the General Election Commission of Muara Enim Regency Number 51/Kpts/KPU-Kab-006.435441/2013, dated April 17, 2013 regarding "Amendment to Decision of the General Election Commission Number 42/Kpts/KPU-Kab-006.4355441/2013 regarding "Determination of Candidate Pair of Regent and Deputy Regent Elected in the General Election of Regent and Deputy Regent of Muara Enim for the Period of 2013-2018" and the Copy of Decree of the Ministry of Home Affairs Number 131.16-2968 of 2013 dated May 30, 2013 regarding "Ratification of Appointment of Regent of Muara Enim, South Sumatra

Province", hence **Ir. H. Muzakir Sai Sohar** as **Regent of Muara Enim** is valid and legally appropriate to act on behalf of the Regional Government of Muara Enim Regency.

3) **The Regional Government of Belitung Regency, Bangka Belitung Islands Province,** domiciled at Jalan A. Yani Number 001 Tanjung Pandan, based on Decree of the General Election Commission of Belitung Regency Number 60/Kpts/KPU-BEL-009.436452/X/2013 dated October 14, 2013 regarding "Determination of Candidate Pair Elected in the General Election of Regent and Deputy Regent of Belitung in 2013" and Extract of Decree of the Ministry of Home Affairs Number 131.19-7270 of 2013 dated December 14, 2013 regarding "Ratification of Appointment of the Regent of Belitung, Bangka Belitung Islands Province", hence **H. Sahani Saleh, S.Sos.** as **Regent of Belitung** is valid and legally appropriate to act on behalf of the Regional Government of Belitung Regency.

4) **The Regional Governemnt of Merangin Regency, Jambi Province,** domiciled at Jalan Jend. Sudirman Number 1, Bangko, based on Decree of the General Election Commission of Merangin Regency Number 42/Kpts/KPU-Kab/005.435300/Tahun2013 dated March 31, 2013 regarding "Determination of Selected Candidate Pair

of Participants in the General Election of Regent and Deputy Regent of Merangin in 2013" and Extract of Decree of the Ministry of Home Affairs Number 131.15-4494 of 2013 dated June 3, 2013 regarding "Ratification of the Appointment of Regent of Merangin, Jambi Province", hence **Al Haris, S.Sos., M.H.** as **Regent of Merangin** is valid and legally appropriate to act on behalf of the Regional Government of Merangin Regency.

5) **The Regional Government of West Tanjung Jabung Regency, Jambi Province,** domiciled at Jalan Jenderal Gatot Subroto Number 185 Kuala Tungkal, based on Decree of the General Election Commission of West Tanjung Jabung Regency Number 32.B of 2010 dated October 25, 2010 regarding "Determination and Announcement of Candidate Pair Elected in the General Election of Regional Head and Deputy Head of West Tanjung Jabung Regency in 2010" and Decree of the Ministry of Home Affairs Number 131.15-1101 of 2010 dated December 29, 2010 regarding "Ratification of the Termination and Endorsement of Appointment of the Regent of West Tanjung Jabung, Jambi Province", hence **Drs. H. Usman Ermulan, M.M.** as **Regent of West Tanjung Jabung** is valid and legally appropriate to

act on behalf of the Regional Government of West Tanjung Jabung Barat.

6) **The Regional Government of East Lampung Regency, Lampung Province**, domiciled at Jalan Lintas Timur Sumatera, Sukadana, East Lampung, based on Copy of Decree of the Ministry of Home Affairs Number 131.18-4949 of 2015 dated August 27, 2015 regarding "Appointment of the Acting Regent of East Lampung, Lampung Province", hence **Drs. Tauhidi, M.M.** as **Acting Regent of East Lambung** is valid and legally appropriate to act on behalf of the Regional Government of East Lampung Regency.

7) **The Regional Government of Tanggamus Regency, Lampung Province**, domiciled at Jalan Mayjend. S. Parman Number 1 Kota Agung, based on Decree of the General Election Commission of Tanggamus Regency Number 794/KPU-Kab/008.435591/X/2012 dated October 4, 2012 regarding "Determination of Candidate for Regent and Deputy Regent Elected in the General Election of Regent and Deputy Regent of Tanggamus in 2012" hence **H. Bambang Kurniawan** as **Regent of Tanggamus** is valid and legally appropriate to act on behalf of the Regional Government of Tanggamus Regency.

8) **The Regional Government of Lebak Regency, Banten Province,** domiciled at Jalan Abdi Negara Number 3 Lebak, based on Decree of the General Election Commission of Lebak Regency Number 52/Kpts/ KPU.Kab/015.436415/XII/2013, dated December 21, 2013 regarding "Determination of Selected Candidate Pair for Regent and Deputy Regent of Lebak Regency for the Period of 2013 – 2018. Based on the Results of Revote in the General Election of Regent and Deputy Regent of Lebak Regency in 2013" and copy of Decree of the Ministry of Home Affairs Number 131.36-225 of 2014, dated January 10, 2014, regarding "Ratification of Appointment of the Regent of Lebak, Banten Province", hence **Hj. Iti Octavia Jayabaya, S.E., M.M.** as **Regent of Lebak** is valid and legally appropriate to act on behalf of the Regional Government of Lebak Regency.

9) **The Regional Government of West Bandung Regency, West Java Province,** domiciled at Jalan Raya Batujajar Km. 3.5 Number 46, Batujajar, based on Decree of the General Election Commission of West Bandung Regency Number 38/Kpts/KPU-Kab.011.329865/ V/2013 dated May 24, 2013 regarding "Determination of Candidate Pair of Regent and Deputy Regent of West Bandung Elected for the period of 2013-2018"

and Copy of Decree of the Ministry of Home Affairs Number 131.32-4670 of 2013 dated July 9, 2013 regarding "Ratification of Appointment of the Regent of West Bandung", hence **Drs. H. Abubakar, M.Si.** as **Regent of West Bandung** is valid and legally appropriate to represent the Regional Government of West Bandung Regency.

10) **The Regional Government of Majalengka Regency, West Java Province,** domiciled at Jalan Jenderal A.Yani Number 1 Majalengka, based on Decree of the General Election Commission of Majalengka Regency Number 60/Kpts/KPU-Kab.011.329129/2013, dated September 22, 2013 regarding "Determination of Candidate Pair of Regent and Deputy Regent Elected in the Selection of Regent and Deputy Regent of Majalengka in 2013" and Copy of Decree of the Ministry of Home Affairs Number 131.32-7172 of 2013, dated December 3, 2013, regarding "Ratification of Appointment of the Regent of Majalengka, West Java Province", hence **H. Sutrisno, S.E., M.Si.** as **Regent of Majalengka** is valid and legally appropriate to act on behalf of the Regional Government of Majalengka Regency.

11) **The Regional Government of Pati Regency, Central Java Province,** domiciled at Jalan Tombronegoro Number 1 Pati, based on Decree of General Election

Commission of Pati Regency Number 15/Kpts/KPU-Kab.Pati-012.329311/2012 dated June 21, 2012 regarding "Determination of Elected Candidates for Re-vote in the General Election of Regent and Deputy Regent of Pati" and Decree of the Ministry of Home Affairs Number 131.33-514 of 2012 dated August 3, 2012 regarding "Termination of the Acting Regent of Pati and Ratification of the Appointment of Regent of Pati, Central Java Province", hence **H. Haryanto, S.H., M.M.** as **Regent of Pati** is valid and legally appropriate to act on behalf of the Regional Government of Pati Regency.

12) **The Regional Government of Kulon Progo Regency, Yogyakarta Special Region Province**, domiciled at Jalan Perwakilan Number 1 Wates, based on Decree of General Election Commission of Kulon Progo Regency Nomor 33/Kpts/KPU-Kab-013.329599/ P.KADA/VI/2011 dated June 22, 2011 regarding "Determination of Candidate Pair Elected in the General Election of Regional Head and Deputy Head of Kulon Progo Regency in 2011" and Copy of Decree of the Ministry of Home Affairs Number 131.34-604 of 2011 dated August 12, 2011 regarding "Ratification of Termination and Endorsement of the Appointment of Regent of Kulon Progo Regency, Yogyakarta Special Region Province",

hence **dr. Hasto Wardoyo, Sp.OG (K)** as **Regent of Kulon Progo** is valid and legally appropriate to act on behalf of the Regional Government of Kulon Progo Regency.

13) **The Regional Government of Madiun Regency, Central Java Provinc**, domiciled at Jalan Alun-Alun Utara Number 1-3 Mejayan, Madiun, based on Decree of the Ministry of Home Affairs Number 131.35-4813 of 2013, dated July 30, 2013, regarding "Ratification of the Appointment of Regent of Madiun, East Java Province", hence **H. Muhtarom, S.Sos.** as **Regent of Madiun** is valid and legally appropriate to act on behalf of the Regional Government of Madiun Regency.

14) **The Regional Government of Trenggalek Regency, East Java Province**, domiciled at Jalan Pemuda Number 1 Trenggalek, based on Decree of Governor of East Java Number 131.406/690/011/2015 dated October 2, 2015 regarding "Appointment of the Regional Secretary of Trenggalek Regency as the Acting Regent (PLH) of Trenggalek", hence **Drs. Ali Mustofa** as the **Acting Regent of Trenggalek** is valid and legally appropriate to act on behalf of the Regional Government of Trenggalek Regency.

15) **The Regional Government of Bangli Regency, Bali Province,** domiciled at Brigjend Ngurah Rai Number

30 Bangli, based on Copy of Decree of the Ministry of Home Affairs Number 131.51-4641 of 2015 dated July 23, 2015 regarding "Appointment of the Acting Regent of Bangli, Bali Province", hence **I Dewa Gede Mahendra Putra, S.H., M.H.** as the **Acting Regent of Bangli** is valid and legally appropriate to act on behalf of the Regional Government of Bangli Regency.

16) **The Regional Government of Kapuas Regency, Central Kalimantan Province,** domiciled at Jalan Pemuda Km 5.5 Kuala Kapuas, based on Decree of the General Election Commission of Kapuas Regency Number 18/Kpts/KPU-Kab-020.435812/2013, dated April 1, 2013 regarding "Determination of Candidate Pair Elected in the Election of Regent and Deputy Regent of Kapuas. Based on Decision of the Constitutional Court Number 94/PHPU.DX/2012 dated March 26, 2013" and Copy of Decree of the Ministry of Home Affairs of the Republic of Indonesia Number 131.62-2801 of 2013, dated April 19, 2013 regarding "Ratification of Appointment of the Regent of Kapuas, Central Kalimantan Province", hence **Ir. Ben Brahim S. Bahat, M.M., M.T.** as **Regent of Kapuas** is valid and legally appropriate to act on behalf of the Regional Government of Kapuas Regency.

17) **The Regional Government of Bulungan Regency, North Kalimantan Province,** domiciled at Jalan Jelarai Tanjung Selor, based on Excerpt of Decree of the Ministry of Home Affairs Number 131.64-4996 dated August 28, 2015 regarding "Appointment of the Acting Regent of Bulungan, North Kalimantan Province", hence **Ir. H. Syaiful Herman, M.AP.** as the **Acting Regent of Bulungan** is valid and legally appropriate to act on behalf of the Regional Government of Bulungan Regency.

18) **The Regional Government of North Gorontalo Regency, Gorontalo Province,** domiciled on Jalan Kusnodonupoyo, Kantor Blok Plan Kantor Bupati, Kwandang, based on Decree of the General Election Commission of North Gorontalo Regency Number 40/Kpts/Pemilukada/KPU-Kab-027.964859/ of 2013 dated September 30, 2013 regarding "Determination of Elected Candidate Pair of Regional Head and Deputy Head of North Gorontalo Regency for the period of 2013-2018" and Decree of the Ministry of Home Affairs Number 131.75-7152 of 2013 dated December 2, 2013 regarding "Ratification of Appointment of the Regent of North Gorontalo, Gorontalo Province", hence **Indra Yasin, S.H., M.H.** as **Regent of North Gorontalo** is valid and legally appropriate to act on

behalf of the Regional Government of North Gorontalo Regency.

19) **The Regional Government of Sumbawa Regency, West Nusa Tenggara Province**, domiciled at Jalan Garuda Number 1 Sumbawa Besar, based on Decree of the General Election Commission of Majalengka Regency Number 48 of 2010, dated August 23, 2010 regarding "Determination of Candidate Pair Elected in the Election of Regent and Deputy Regent of Sumbawa in 2010" and Decree of the Ministry of Home Affairs Number 131.52-1076 of 2010, dated December 23, 2010, regarding "Termination of the Acting Regent of Sumbawa and Ratification of Appointment of the Regent of Sumbawa, West Nusa Tenggara Province", hence **Drs. H. Jamaluddin Malik** as **Regent of Sumbawa** is valid and legally appropriate to act on behalf of the Regional Government of Sumbawa Regency.

20) **The Regional Government of Serdang Bedagai Regency, North Sumatera Province**, domiciled at Jalan Negara Number 300 Sei Rampah, based on Excerpt of Decree of the Ministry of Home Affairs Number 131.12-5235 of 2015 dated September 22, 2015 regarding "Appointment of the Regent of Serdang Bedagai, North Sumatra Province", hence **Ir. H. Alwin, M.Si.** as the **Acting Regent of Serdang Bedagai** is valid and legally

appropriate to act on behalf of the Regional Government of Serdang Bedagai Regency.

21) **The Regional Governement of Lamandau Regency, Central Kalimantan Province,** domiciled at Jalan Tjilik Riwut Number 10 Nanga Bulik, based on Decree of the General Election Commission of Lamandau Regency Number 07/Kpts/KPU.Kab-020.435874/IV/2013 dated April 11, 2013 regarding "Determination of Voting for the General Election of Regional Head and Deputy Head of Regency Lamandau in 2013" and Decree of the Ministry of Home Affairs Number 131.62-4652 of 2013 dated July 4, 2013 regarding "Ratification of Appointment of the Regent of Lamandau, Central Kalimantan Province", hence **Ir. Marukan, M.AP.** as **Regent of Lamandau** is valid and legally appropriate to act on behalf of the Regional Government of Lamandau Regency.

22) **The Regional Governement of Cilacap Regency, Central Java Province,** domiciled at Jend. Sudirman Number 32, Cilacap, based on Decree of the General Election Commission of Cilacap Regency Number 27/Kpts/KPU-Kab-012.329382/2012, dated September 15, 2012 regarding "Candidate Pair Elected in the General Election of Regent and Deputy Regent of Cilacap in 2012" and Extract of Decree of the

Ministry of Home Affairs Number 131.33 - 782 of 2012 dated November 12, 2012 regarding "Ratification of Appointment of the Regent of Cilacap, Central Java Province", hence **H. Tatto Suwarto Pamuji** as **Regent of Cilacap** is valid and legally appropriate to act on behalf of the Regional Government of Cilacap Regency.

23) **The Regional Government of Tangerang Regency, Banten Province**, domiciled at Komplek Perkantoran Pemda Tiga Raksa, Tangerang, based on Decree of the General Election Commission of Tangerang Regency Number 008/Kpts/KPU-Kab.Tng/ 015436389/XII/2012 dated December 14, 2012 regarding "Determination of Elected Candidate Pair of Regent and Deputy Regent of Tangerang for the Period of 2013-2018" and Decree of the Ministry of Home Affairs Number 131.36 - 218 of 2013 dated February 20, 2013 regarding "Ratification and Appointment of the Regent of Tangerang, Banten Province", hence **Ahmed Zaki Iskandar, B.Bus., S.E.** as **Regent of Tangerang** is valid and legally appropriate to act on behalf of the Regional Government of Tangerang Regency.

24) **The Regional Government of Nias Regency, North Sumatera Province**, domiciled at Jalan Pelud Binaka Km. 9 Gunung Sitoli Selatan, based on Decree of the

General Election Commission of Nias Regency Number 13/Kpts/KPU-Kab-002.434713/2011, dated April 9, 2011 regarding "Determination of Selected Regent and Deputy Regent Candidates for the Period of 2011-2016 in the General Election of Regional Head and Deputy Head of Nias Regency in 2011" and Extract of Decree of the Ministry of Home Affairs Number 131.12 - 400 of 2011 dated May 30, 2011 regarding "Ratification of Appointment of the Regent of Nias" hence **Drs. Sokhiatulo Laoli, M.M.** as **Regent of Nias** is valid and legally appropriate to act on behalf of the Regional Government of Nias Regency.

25) **The Regional Government of Southeast Minahasa Regency, North Sumatera Province**, domiciled at Jalan Raya Ratahan Belang, Kelurahan Pasan, Kecamatan Ratahan, based on Decree of the Ministry of Home Affairs of the Republic of Indonesia Number 131.7 - 6662 of 2013 dated September 16, 2013 regarding "Ratification of Appointment of the Regent of Southeast Minahasa, North Sulawesi Province", hence **James Sumendap, SH.** as R**egent of Southeast Minahasa,** is valid and legally appropriate to act on behalf of the Regional Government of Southeast Minahasa Regency.

26) **The Regional Government of Sarolangun Regency, Jambi Province**, domiciled at Komplek Perkantoran Gunung Kembang Number 01 Sarolangun, Jambi, based on Decree of the General Election Commission of Sarolangun Regency Number 15 of 2011, dated May 3, 2011 regarding "Determination and Announcement of Selected Candidates for Voting Results and Vote Counting of the General Election of Regional Head and Deputy Head of Sarolangun Regency in 2011" and Decree of the Ministry of Home Affairs Number 131.15 - 539 of 2011 dated July 13, 2011 regarding "Ratification of Appointment of the Regent of Sarolangun, Jambi Province", hence **Drs. H. Cek Endra** as **Regent of Sarolangun** is valid and legally appropriate to act on behalf of the Regional Government of Sarolangun Regency.

27) **The Regional Government of Sigi Regency, Central Sulawesi Province**, domiciled at Jalan Lasoso Number 10, Sigibiromaru, based on Decree of the General Election Commission of Donggala Regency Number 278/204/KPU-KWK/2010/2010, dated September 22, 2010 regarding "Determination of Elected Candidate Pair of Regional Head and Deputy Head of Sigi Regency in 2010" and Decree of the Ministry of Home Affairs of the Republic of Indonesia Number 131.72-943 of 2010

dated November 18, 2010 regarding "Termination of the Acting Regent of Sigi and Ratification of Appointment of Regent of Sigi, Central Sulawesi Province", hence **Ir. H. Aswadin Randalembah, M.Si.,** as **Regent of Sigi** is valid and legally appropriate to act on behalf of the Regional Government of Sigi Regency.

28) **The Regional Government of Konawe Regency, Southeast Sulawesi Province,** domiciled at Jalan Inolobunggadue, based on general knowledge (*notoire feiten*) that **Kerry Saiful Konggoasa** is Regent of Konawe, therefore he is valid and legally appropriate to act on behalf of the Regional Government of Konawe Regency.

29) **The Regional Government of Sidoarjo Regency, East Java Province,** domiciled at Jalan Gubernur Suryo Number 1, Sidoarjo, based on general knowledge (*notoire feiten*) that **H. Saiful Ilah, S.H., M.Hum.** is **Regent of Sidoarjo,** therefore he is valid and legally appropriate to act on behalf of the Regional Government of Sidoarjo Regency.

30) **The Regional Government of Dairi Regency, North Sumatera Province,** domiciled at Jalan Sisingamangaraja Number 127, Sidikalang, based on general knowledge (*notoire feiten*) that **Irwansyah**

Pasi, S.H. is **Regent of Dairi,** therefore he is valid and legally appropriate to act on behalf of the Regional Government of Dairi Regency.

31) **The Regional Government of South Lampung Regency, Lampung Province,** based on general knowledge (*notoire feiten*) that **H. Kherlani, S.E.,M.M.** is **Acting Regent of South Lampung,** therefore he is valid and legally appropriate to act on behalf of the Regional Government of South Lampung Regency.

32) **The Regional Government of Kupang Regency, East Nusa Tenggara Province,** domiciled at Jalan Soekarno Number 18 Kupang, based on general knowledge (*notoire feiten*) that **Drs. Ayub Titu Eki, M.S., Ph.D.** is **Regent of Kupang,** therefore he is valid and legally appropriate to act on behalf of the Regional Government of Kupang Regency.

33) **The Regional Government of Central Sumba Regency, East Nusa Tenggara Province,** domiciled at Jalan Cepi Watu, Toka Borong, based on general knowledge (*notoire feiten*) that **Drs. Umbu Sappi Pateduk** is **Regent of Central Sumba,** therefore he is valid and legally appropriate to act on behalf of the Regional Government of Central Sumba Regency.

34) **The Regional Government of East Lombok Regency, West Nusa Tenggara Province,** domiciled at Jalan

Prof. M. Yamin Number 57, NTB, based on Decree of the General Election Comission of East Lombok Regency Number 1.PB/KPTS/KPU-Lotin/V/2013, dated May 20, 2013 regarding Determination of the Recapitulation Results of the General Election Vote Calculation of Regent and Deputy Regent of East Lombok and Excerpt of Decree of the Ministry of Home Affairs Number 131.52-6355 of 2013, dated August 20, 2013 regarding Ratification of Appointment of the Regent of East Lombok, West Nusa Tenggara Province, hence **Dr. H. Moh. Ali B. Dahlan, S.H., M.H.** as Regent of East Lombok is valid and legally appropriate to act on behalf of the Regional Government of East Lombok Regency.

35) **Pemerintah Daerah Kabupaten Balangan, Provinsi Kalimantan Selatan,** domiciled at Jalan Jend. A. Yani, Paringin, based on general knowledge (*notoire feiten*) that **H. M. Hawari** is **Acting Regent of Balangan,** therefore he is valid and legally appropriate to act on behalf of the Regional Government of Balangan Regency.

36) **The Regional Government of South Tapanuli Regency, North Sumatera Province,** domiciled at Jalan Kenanga Number 74 Padang Sidempuan, based on general knowledge (*notoire feiten*) that **Dr. H. Sarmadan**

Hasibuan, S.H., M.M. is **Acting Regent of South Tapanuli,** therefore he is valid and legally appropriate to act on behalf of the Regional Government of South Tapanuli Regency.

37) **The Regional Government of Magetan Regency, East Java Province,** domiciled at Jalan Basuki Rahmat Number 1 Magetan, based on general knowledge (*notoire feiten*) that **Samsi** is **Acting Regent of Magetan,** therefore he is valid and legally appropriate to act on behalf of the Regional Government of Magetan Regency.

38) **The Regional Government of Tabanan Regency, Bali Province,** domiciled at Jalan Pahlawan Number 19 Tabanan, based on general knowledge (*notoire feiten*) that **I Wayan Sugiada, S.H., M.H.** is **Acting Regent of Tabanan,** therefore he is valid and legally appropriate to act on behalf of the Regional Government of Tabanan Regency.

39) **The Regional Government of Batang Regency, Central Java Province,** domiciled at Jalan R.A. Kartini Number 1, Batang, based on general knowledge (*notoire feiten*) that **Soetadi, S.H., M.M.** is **Deputy Regent of Batang,** therefore he is valid and legally appropriate to act on behalf of the Regional Government of Batang Regency.

40) **The Regional Government of Sumedang Regency, West Java Province,** domiciled at Jalan Prabu Geusan Ulun Number 36 Sumedang, based on general knowledge (*notoire feiten*) that **Ir. H. Eka Setiawan, Dipl., S.E., M.M.** is **Deputy Regent of Sumedang,** therefore he is valid and legally appropriate to act on behalf of the Regional Government of Sumedang Regency.

41) **The Regional Government of Soppeng Regency, South Sulawesi Province,** based on general knowledge (*notoire feiten*) that **H. Aris Muhammadia** is **Deputy Regent,** therefore he is valid and legally appropriate to act on behalf of the Regional Government of Soppeng Regency.

Where pursuant to Article 1 paragraph (3) juncto Article 65 paragraph (1) letter e of Law Number 23 of 2014 regarding Regional Government, the Regional Government is the regional head as an element of the regional government administration that "*has the duty and authority to represent the region inside and outside the Court, and may appoint their attorneys to represent them in accordance with laws and regulations*." The norms of this article have existed and are valid from the Law Number 22 of 1999 (vide Article 47) to the latest in Law Number 32 of 2004

(vide Article 25 letter f), and continued to be used as a norm in the Law Number 23 of 2014;

In addition, the authority of the regional head/the regional government in representing their regions filed a lawsuit in the Constitutional Court has been recognized by the legal standing by the Constitutional Court as referred to in several decisions, including:

a. **Decision Number 010/PUU-I/2003**, stated in an open session on August 26, 2004, the lawsuit in reviewing the Law Number 11 of 2003 to the Constitutional Court filed by **H. Jefry Noer, Regent of Kampar** WITHOUT BEING ACCOMPANIED by the participation and/or approval of the Regional House of People's Representatives (DPRD) of Kampar, with excerpt of the following considerations:

"Considering whereas the Petitioner, Regent of Kampar Regency is the Regional Head of Kampar Regency who is according to the provisions of Article 47 of Law Number 22 of 1999 has the authority to represent his region inside and outside the Court, and can appoint an attorney to represent him. As a public legal entity, Kampar Regency considers its constitutional rights and/or authority to be impaired by the Law of the Republic of Indonesia Number 11 of 2003, namely by ejecting Tandun Village, Aliantan Village, and

Kabun Village from the Area of Kampar Regency, which according to the Petitioner contradicts Article 18 paragraph (1) of the 1945 Constitution of the Republic of Indonesia;

"Accordingly, the Petitioner as such (a quo) has legal standing to submit an application for review of the Law of the Republic of Indonesia Number 11 of 2003 against the Constitution of the Republic of Indonesia";

"Considering whereas since the Court has the authority to examine, adjudicate, and decide upon the petition as such (a quo) submitted by the Petitioner who has Legal Standing, the Court needs to further consider the main case argued by the Petitioner".

(vide Decision Number 010/PUU-I/2003, page 49, paragraph 1, paragraph 2 and paragraph 3)

b. **Desicion Number 070/PUU-II/2004,** stated in an open session on April 12, 2005, the lawsuit in reviewing the Law Number 26 of 2004 regarding the Formation of West Sulawesi Province to the Constitutional Court filed by **H. Amin Syam, Governor of South Sulawesi Province** WITHOUT BEING ACCOMPANIED by the participation and/or approval of the Regional House of People's Representatives (DPRD) of South Sulawesi

Province, with excerpt of the following consideration:

"Considering the Petitioner argues that South Sulawesi Province is a public legal entity formed by law, which carries rights and obligations, has wealth, and can sue and be sued before the Court. The Petitioner also argues that as the Governor/Regional Head, in accordance with Article 24 paragraph (1) and Article 25 letter f of Law Number 32 of 2004 regarding Regional Government has the right to represent the region inside and outside the court and can appoint an attorney to represent him";

"Considering whereas the Petitioner considers his constitutional rights and/or authorities guaranteed by Article 18 paragraph (2), paragraph (5), paragraph (6) and paragraph (7) of the 1945 Constitution, as elucidated in the Law Number 32 of 2004 and Law Number 22 of 1999, it became lost or reduced due to the enactment of Article 15 paragraph (7) and paragraph (9) of Law Number 26 of 2004. The Court is of the opinion that the Petitioner's opinion above is reasonable, so that the Petitioner is considered to have legal standing";

"Considering whereas since the Court has the authority and the Petitioner has legal standing, the

Court will further consider the Petitioner's arguments in the subject matter";

(vide Decision Number 070/PUU-II/2004, page 43, paragraph 2, paragraph 3 and paragraph 4)

c. **Decision Number 10/PUU-X/2012** stated in an open session on November 22, 2012, the Lawsuit in Reviewing the Law Number 4 of 2009 regarding Mineral and Coal Mining submitted by **H. Isran Noor, M.Si.,** as **Regent of East Kutai,** WITHOUT BEING ACCOMPANIED by the participation/approval of the Chairman of the Regional House of People's Representatives (DPRD) of East Kutai Regency, with the reasons of the following consideration:

"Whereas the Petitioner as the Regional Head of East Kutai Regency feels his constitutional right impaired to exercise the autonomy as much as possible and does not get justice in the utilization of natural resources for the prosperity of the people of East Kutai Regency, as guaranteed in Article 18 paragraph (5), Article 18A paragraph (2), Article 33 paragraph (2) and paragraph (3) of the 1945 Constitution.

Concretely, the loss is caused by the articles in the law as such (a quo) that have given authority to the central government to determine Mining Area (Wilayah Pertambangan, WP) and Mining Business Area (Wilayah

Usaha Pertambangan, WUP) and to determine the extent and boundaries of Mining Business License Area (Wilayah Izin Usaha Pertambangan, WIUP) for metal mineral and coal in the area of regency/city governments, so that the Petitioner does not have authority intact and comprehensive as has been provided by the 1945 Constitution. Norms for the stipulation of WP and WUP as well as norms for the determination of the extent and boundaries of WIUP in the area of regency/city governments that placed the authority solely on the Government, not on the regional government, have shown that the provision as such (a quo) is a law which is not aimed at rechtsidee in the utilization of mineral and coal resources that are fair and in accordance with the Law, thus harming the Petitioner's constitutional rights;

[3.8] *Considering whereas based on the Petitioners' arguments, according to the Court, the Petitioner, based on Article 3 paragraph (1) letter b and paragraph (3) of Law Number 32 of 2004 regarding Regional Government (hereinafter referred to as the Law 32/2004) has the authority to act on behalf of for and on behalf of the Regional Government of East Kutai to submit the petition as such (a quo) before*

the Court. Based on the arguments of the Petitioner's petition as described above, according to the Court, there is a constitutional impairment of the Petitioner, that is, the loss or reduction of the rights and authority of the Petitioner as well as the existence of injustice and legal uncertainty in the management and utilization of mineral and coal resources that if the petition granted, the Petitioner's constitutional rights are suffered, so that the Petitioner meets the legal standing requirements to submit the petition as such (a quo);

(vide Decision Number 10/PUU-X/2012, Paragraph (3.7) and paragraph (3.8) page 75-76)

d. **Decision Number 9/PUU-XI/2013** stated in an open session on March 26, 2014, the Lawsuit in Reviewing the Law Number 30 of 2009 regarding Electricity filed by **Mardani H. Maming, SH.,** as **Regent of Tanah Bumbu,** WITHOUT BEING ACCOMPANIED by the participation/approval of the Chairman of the Regional House of People's Representatives (DPRD) of Tanah Bumbu Regency, with the reasons of the following consideration:

"whereas based on the provisions of Article 51 paragraph (1) of the Constitutional Court Law and the requirements for impairment of constitutional rights

and/or authorities as described above, according to the Court, the Petitioner as the regional head representing his region to submit an application relating to the interests of his region is part of the "regional government" as referred to in Article 18 paragraph (2), Article 18 paragraph (5), and Article 18A paragraph (2) of the 1945 Constitution. Related to his position as the regional head who is trying to prosper his community by submitting the petition as such (a quo), the Petitioner is also a part of every person who has the right to develop themselves in fighting for their collective rights to develop society, nation and state (vide Article 28C paragraph (2) of the 1945 Constitution). In addition, the Petitioner as part of regional government is also part of the "state" as referred to in Article 33 paragraph (2) and paragraph (3) of the 1945 Constitution. Therefore, the phrase "controlled by the state" in Article 33 paragraph (2) and paragraph (3) of the 1945 Constitution is contained in the meaning that the state in this case is the central government and the regional government carry the mandate or have the constitutional authority to control the production branches that are important for the country and that control the livelihoods of

many people and control the earth and water and wealth nature contained therein and used for the greatest prosperity of the people:

Whereas based on the legal considerations above, according to the Court, the Petitioner as a public legal entity has constitutional rights granted by the 1945 Constitution which the Petitioner considers to be impaired by the enactment of the Electricity Law petitioned for review, for which the impairment of constitutional rights is specific and actual that is related to the need for electrical energy to meet the lives of many people, especially the people of Tanah Bumbu Regency. There is also a causal relationship (causal verband) between the loss referred to as the enactment of the Electricity Law petitioned for review, so there is a possibility that the Petitioner's petition is granted, the impairment of constitutional rights as argued will not or will not occur again. Therefore, according to the Court, the Petitioner has a legal standing to submit the petition as such (a quo);

***(vide* Decision Number 9/PUU-XI/2013, paragraph 3.7, page 115-116)**

Based on the legal reasons above, hence the valid and legal reasons for the legal standing of **the**

PETITIONER III to the PETITIONER XLVI as respective regional heads or Regional Governments to submit petition in reviewing the Law Number 23 of 2014 regarding Regional Government to the Constitutional Court;

4) **THE PETITIONER XLVII, Ibnu Jandi, S.Sos., M.M.** is an Indonesian citizen, ID Number: 3671012106610001 having his address at Jalan Al Muhajirin RT.002 RW.009, Kelurahan Tanah Tinggi, Kecamatan Tangerang, Tangerang City, where the Individual is also a taxpayer with Taxpayer Identification Number (NPWP): 25.969.286.1-416.000.

7. Whereas the PETITIONERS impaired by the norms of the articles in Law Number 23 of 2014 submitted to be reviewed before this Court, because:

a. The articles reviewed have or at least potentially hampered the constitutional rights of the PETITIONERS, especially **the PETITIONER I to the PETITIONER XLVII**, to carry out regional autonomy and regional development with their diversity and peculiarities mandated by the Constitution [vide Article 18 paragraph (2), Article 18 paragraph (5), and Article 18A paragraph (1) of the 1945 Constitution] as will be elucidated more fully in the Principal Petition;

b. As organization and individual who have the duty and function of fighting for and guarding regional autonomy, the **PETITIONER I** and the **PETITIONER** XLVII, have constitutional rights to develop themselves in fighting for their collective rights to develop their society, nation and state as referred to in Article 28C paragraph (2) of the Constitution 1945. In addition, their rights are also protected by the Constitution for the recognition, guarantee, protection and fair legal certainty and equal treatment before the law as affirmed in Article 28D (1) of the 1945 Constitution;

c. THE PETITIONER has a certain view and believes that the articles being reviewed have or at least have the potential:

Related to the Classification of Government Affairs (Article 9, Article 11, Article 12, Article 13, Article 14, Article 15, Article 16, Article 17, Article 21, Article 27, and Article 28 of Law Number 23 of 2014)

- Closing space for the implementation of regional autonomy broadly (vide Article 18 paragraph (5) of the 1945 Constitution) because it limits rigidly and firmly the authority, role and involvement of the regional governments in managing and maximizing

the potential that exists in their respective regions;

- Eliminating or at least obscuring the essence of the Constitutional norms "self-regulating and managing of government affairs" for Regional Governments [vide Article 18 paragraph (2) of the 1945 Constitution] by adding concurrent governmental affairs and general government which are not provided by the Constitution, which substantively becomes the entrance for the Central Government to withdraw and take on the affairs of the regional government of Regency/City which should be regulated and managed by themselves as instructed by the Constitution;
- Expanding and enlarging the interference and involvement of the Central Government and the Governor as the representative of the Central Government in the implementation of government affairs that should be given to the Regional Government which therefore inhibits the creativity and development of regional potential in accordance with the diversity, uniqueness, and peculiarity of each region as a constitutional right of the Regional Government of Regency/City [vide Article 18A paragraph (1) of the 1945 Constitution], which

in turn extends access and lines of public services so that the targets and objectives of granting regional autonomy mandated by the Constitution cannot be achieved or implemented;

- The pattern of government relations built through the rules and norms contained in the articles being reviewed, and even in the Law Number 23 of 2014 as a whole, has changed from a tiered structured pattern that is independent, flexible, and supports each other in the context of creating democratization space, becomes hierarchical pattern, sub-ordinate, centralistic, and based on "giving", not fair, consistent, and equal "distribution" [vide Article 18 paragraph (1) juncto Article 18A paragraph (1) of the 1945 Constitution];
- Restoring the situation of regional people as "spectators" in development as happened in the New Order Era which was later demanded to be returned to the regions. Though this situation has been reformed and restored by the Constitution as can be seen in Amendment to Article 18, Article 18A, and Article 18B of the 1945 Constitution;

Related to the Authority of the Central Government and the Governor to Cancel Regional Regulation and

Regional Head Elections (Article 251 paragraph (2), paragraph (3), paragraph (4), and paragraph (8) of Law Number 23 of 2014 regarding Regional Government)

- Affirming the importance of the legitimacy and voice of the people who directly elect regional heads and regional representatives in the Regional House of People's Representatives (DPRD) democratically through (general) Election [vide Article 18 paragraph (3) and (4) of the 1945 Constitution] by taking all their constitutional rights and authorities in the regulation and implementation of regional autonomy as well as regulating each region that is specific and unique through Regional Regulation and Regional Head Regulation in the context of carrying out the principle of regional autonomy granted by the Constitution [vide Article 18 paragraph (6) of the 1945 Constitution];
- Taking over the constitutional authority of the Supreme Court granted in Article 24A paragraph (1) of the 1945 Constitution as the holder of judicial power in terms of reviewing the laws and regulations under the law against the law, which in turn creating legal uncertainty related to the

review mechanism and cancellation of Regional Regulation and Regional Head Regulation of Regency/City as a form of product of laws and regulations under the law as referred to in Article 7 of the Law Number 12 of 2011 regarding Formation of Laws and Regulations. Whereas as a state of law, the Constitution of the Republic of Indonesia has guaranteed the citizen's right to obtain fair legal certainty (*rechts zakerheid*) as referred to in Article 28D paragraph (1) of the 1945 Constitution;

8. Whereas if the constitutional rights specified, the Petitioners are violated by the articles reviewed in this petition can be seen in the following table:

NO	**ARTICLE LAW 23/2014 REVIEWED**	**NORM CONTAINED IN ARTICLE REVIEWED**	**CONSTITUTIONAL RIGHTS OF THE PETITIONERS (1945 CONSTITUTION)**	**CONSTITUTIONAL IMPAIRMENT OF THE PETITIONERS**
1	Article 9 paragraph (1), (2), (3), (4) and (5)	The division of government affairs consists of absolute government affairs, concurrent government affairs and general government affairs.	1. The regional government regulates by themselves the government affairs according to the principle of autonomy and co-	1. All three types of the government affairs are in the hands of the central government or at least involve the central government. There is no constitutional right of the

			administration task (Article 18 paragraph (2)) 2. The regional government exercises the broadest autonomy, except for the Government affairs determined by the law to be the Central Government affairs (Article 18 paragraph (5)). 3. Everyone has the right to develop themselves in fighting for their rights collectively to build society, nation, and country (Article 28C paragraph (2)).	Petitioners to regulate their own government affairs. 2. In the word concurrent, there is no autonomy because the concurrent affairs involve the center and the province government. Even legally the regency/city government is limited to certain areas. 3. There is no broadest possible autonomy to the Petitioners. What is contained in the Law is that all affairs are under the authority of the central government except those given to the regions. 4. Development becomes a central policy only and criteria and standard are determined by the central government which is not

				geographically and emotionally close to the people in the region. The Petitioners only carry out central orders and directives. 5. The Regional Government/the Petitioners cannot quickly and easily respond to the needs of their own communities and build their local communities because they must comply with the criteria, standards, norms, and provisions of the central government. 6. The principle of residue theory at the center adopted by article 18 paragraph (5) of the 1945 Constitution is lost and changed to Regional Residue. This means that the regional government/the

				Petitioners only get the authority that is shared and given by the central government. 7. The government pattern becomes very hierarchical and centralistic because it depends and is under the control of the central government. 8. The regional government and community will be the spectators of development again, not the actors who are actively and proactively involved. 9. Implementation of the principles of good governance will be hampered, especially in the aspects of responsiveness and accountability of the regional government of regency/city because the community service chain in the

				regency/city will be centralized at the center or closest in the provincial capital.
2	Article 11 paragraph (1), (2), (3)	The division of concurrent government affairs for mandatory government affairs and selection of government affairs	1. The regional government regulates and manages by themselves the government affairs according to the principle of autonomy and co-administration task (Article 18 paragraph (2)) 2. The regional government exercises the broadest autonomy, except for the Government affairs determined by the law to be the Central Government affairs	**Idem**

			(Article 18 paragraph (5)). 3. Everyone has the right to develop themselves in fighting for their rights collectively to build society, nation, and country (Article 28C paragraph (2)).	
3	Article 12 paragraph (1), (2), (3)	The division of the details of concurrent government affairs included in mandatory government affairs and selection of government affairs.	1. The regional government regulates and manages by themselves the government affairs according to the principle of autonomy and co-administration task (Article 18 paragraph (2)) 2. The regional government exercises	**Idem**

			the broadest autonomy, except for the Government affairs determined by the law to be the Central Government affairs (Article 18 paragraph (5)). 3. Everyone has the right to develop themselves in fighting for their rights collectively to build society, nation, and country (Article 28C paragraph (2)).	
4	Article 13 paragraph (1), (2), (3), (4)	Principles and criteria for the division of authority of the central, provincial and regency/city governments.	1. The regional government regulates and manages by themselves the government affairs according to	**Idem**

			the principle of autonomy and co-administration task (Article 18 paragraph (2)) 2. The regional government exercises the broadest autonomy, except for the Government affairs determined by the law to be the Central Government affairs (Article 18 paragraph (5)). 3. Everyone has the right to develop themselves in fighting for their rights collectively to build society, nation, and country (Article 28C	

			paragraph (2)).	
5	Article 14 paragraph (1), (2), (3) and (4)	1. The Division of governmental affairs in the sector of forestry, maritime and energy and mineral resources only for central and provincial governments. 2. The Government Affairs in the sector of energy and mineral resources related to oil and gas management become the authority of the central government. 3. Direct utilization of geothermal energy in regency/city regions is the authority of regency/city regions.	1. The regional government regulates and manages by themselves the government affairs according to the principle of autonomy and co-administration task (Article 18 paragraph (2)) 2. The regional government exercises the broadest autonomy, except for the Government affairs determined by the law to be the Central Government affairs (Article 18 paragraph (5)). 3. Article 18A	**Idem** **Moreover:** 1. There is no justice for the Petitioners in the use of natural resources, even though the location and place of natural resources are in the regency/city area. The regency/city communities are the first to be affected if there are problems in natural resource management. However, the regency/city regional government (the Petitioners) as the nearest government level and directly elected by the local community is not given any authority in the management of their own natural resources. The principle of "***justitia est ius***

			paragraph (2) which confirms the financial relationship, public services, utilization of natural resources and other resources between the central and regional governments regulated and carried out fairly and in harmony. 4. Everyone has the right to develop themselves in fighting for their rights collectively to build society, nation, and country (Article 28C paragraph (2)).	***suum cuique tribuere***" (justice is given to each person what is his/her right) harmed to the regency/city government (the Petitioners) as the party that should be recognized as the "owner" of natural resources in their area. 2. There is no harmony in the management of natural resources for the Petitioners. This means that there is no harmony and equality in position and portion with the regency/city governments. All natural resource products are taken directly by the center and the provincial governments. As a result, the Regional Original Revenue (PAD) and also the posture of the Regional Revenue and

				Expenditures Budget (APBD) of regional government decreases and declines. This has an impact on the allocation of regency/city regional development funds to the people directly.
6	Article 15 paragraph (1)(2), (3), (4), (5)	1. The division of concurrent government affairs between the central government and the provincial and regency/city regions is contained in the annex to the Law. 2. Concurrent governmental affairs are determined by presidential regulation. 3. Changes to the division of concurrent government affairs between the central government and provincial and	1. The regional government regulates and manages by themselves the government affairs according to the principle of autonomy and co-administration task (Article 18 paragraph (2)) 2. The regional government exercises the broadest autonomy, except for the Government	**Idem** **Moreover:** The authority of the regional government to make the Regional Regulation/Regional Head Regulation as the implementation of the principle of regional autonomy is lost and blurred because all matters have been determined and stipulated by the central government either through the Presidential Regulation (Perpres) or Government Regulation (PP).

		regency/city regions that do not result in the transfer of concurrent government affairs at another level or composition of government are stipulated by the government regulation.	affairs determined by the law to be the Central Government affairs (Article 18 paragraph (5)). 3. The regional government has the right to make regional regulation and other regulations to carry out regional autonomy and co-administration task (Article 18 paragraph (6)). 4. Everyone has the right to develop themselves in fighting for their rights collectively to build society, nation, and country	

			(Article 28C paragraph (2)).	
7	Article 16 paragraph (1) and (2)	The authority of the central government to establish norms, standards, procedures and criteria in the administration of government affairs and to carry out guidance and supervision of the implementation of regional government affairs in concurrent government affairs.	1. The regional government regulates and manages by themselves the government affairs according to the principle of autonomy and co-administration task (Article 18 paragraph (2)) 2. The regional government exercises the broadest autonomy, except for the Government affairs determined by the law to be the Central Government affairs (Article 18 paragraph (5)).	**Idem**

			3. The regional government has the right to make regional regulation and other regulations to carry out regional autonomy and co-administration task (Article 18 paragraph (6)). 4. Everyone has the right to develop themselves in fighting for their rights collectively to build society, nation, and country (Article 28C paragraph (2)).	
8	Article 17 paragraph (1), (2), (3)	1. The region has the right to set regional policies. 2. Regional policies shall be guided by	1. The regional government regulates and manages by themselves the	**Idem**

		norms, standards, procedures and criteria regulated by the central government. 3. The central government can cancel regional policies.	government affairs according to the principle of autonomy and co-administration task (Article 18 paragraph (2)) 2. The regional government exercises the broadest autonomy, except for the Government affairs determined by the law to be the Central Government affairs (Article 18 paragraph (5)). 3. The regional government has the right to make regional regulation and other regulations to carry out	

			regional autonomy and co-administration task (Article 18 paragraph (6)). 4. Everyone has the right to develop themselves in fighting for their rights collectively to build society, nation, and country (Article 28C paragraph (2)).	
9	Article 21	The implementation of concurrent government affairs is regulated in the government regulation	1. The regional government regulates and manages by themselves the government affairs according to the principle of autonomy and co-administration task (Article 18	**Idem**

			paragraph (2)) 2. The regional government exercises the broadest autonomy, except for the Government affairs determined by the law to be the Central Government affairs (Article 18 paragraph (5)). 3. The regional government has the right to make regional regulation and other regulations to carry out regional autonomy and co-administration task (Article 18 paragraph (6)). 4. Everyone has the right to	

			develop themselves in fighting for their rights collectively to build society, nation, and country (Article 28C paragraph (2)).	
10	Article 27 paragraph (1), (2) and Article 28	The provincial region is given the authority to manage natural resources at sea in the region.	1. The regional government regulates and manages by themselves the government affairs according to the principle of autonomy and co-administration task (Article 18 paragraph (2)) 2. The regional government exercises the broadest autonomy, except for the Government	**Same as Number 5.**

			affairs determined by the law to be the Central Government affairs (Article 18 paragraph (5)). 3. The regional government has the right to make regional regulation and other regulations to carry out regional autonomy and co-administration task (Article 18 paragraph (6)). 4. Financial relation, public services, utilization of natural resources and other resources between the central and regional	

			governments are regulated and carried out fairly and in harmony (Article 18A paragraph (2)). 5. Everyone has the right to develop themselves in fighting for their rights collectively to build society, nation, and country (Article 28C paragraph (2)).	
11	Article 251 paragraph (2), paragraph (3), paragraph (4), and paragraph (8)	1. Regency/City Regulation and Regent/Mayor Regulation that conflict with the provisions of the higher laws and regulations, public interests and/or decency are canceled by the Governor as a representative of the Central Government. If	1. The regional government has the Regional House of People's Representatives (DPRD) which is elected through the General Election (Article 18 paragraph	**Same as Number 6.** **moreover:** 1. The authority of the governor and the ministry has taken the constitutional authority of the Supreme Court as set forth in Article 24A paragraph (1) of the 1945 Constitution.

		the governor does not cancel, the ministry will cancel it. 2. Objection by the Regent/Mayor of the cancellation submitted to the Ministry no later than 14 days after the decision on cancellation is received.	(3)). 2. Governors, Regents and Mayors as heads of regional governments are democratically elected (Article 18 paragraph (4)). 3. The regional government has the right to make regional regulation and other regulations to carry out regional autonomy and co-administration task (Article 18 paragraph (6)). 4. The Supreme Court has the authority to adjudicate at the cassation instance, reviewing	2. The norm of this article creates legal uncertainty because it is contrary to the provisions in other laws, namely the Supreme Court Law and the Formation of Laws and Regulations. The Petitioners feel the existence of legal uncertainty in this matter.

			the laws and regulations under the law (Article 24A paragraph (1). 5. Everyone has the right to recognition, guarantee, protection and fair legal certainty and equal treatment before the law (Article 28D paragraph (1)).	

9. Whereas based on the description, if the articles being reviewed are canceled and declared to be in conflict with the Constitution, the constitutional rights of the PETITIONERS will recover in executing, maintaining, guarding and implementing regional autonomy (vide Article 18 and Article 18A of the 1945 Constitution); the right collectively to develop their society, nation and coutry [vide Article 28C paragraph (2) of the 1945 Constitution]; and the right to obtain fair legal certainty [vide Article 28D paragraph (1) of the 1945 Constitution] will be recovered as provided by the Constitution. Therefore there is a clear relationship

between the losses suffered by the Petitioners (*causal verband*) with the provisions of the articles being reviewed;

10. Whereas based on the foregoing matters, THE PETITIONERS has the legal standing to submit this Petition;

IV. PRINCIPAL PETITION

11. Whereas what is stated in number I, II, and III above constitute an integral and inseparable part of number IV concerning subject matter of the Petition;

12. Whereas the object of the petition filed by the PETITIONERS is the Law Number 23 of 2014 with the provisions of the following articles:

    a. Article 9 paragraph (1), paragraph (2), paragraph (3), paragraph (4), and paragraph (5) of the Law Number 23 of 2014 which fully reads:

    (1) The governmental affairs consist of absolute governmental affairs, concurrent governmental affairs and general governmental affairs.

    (2) The absolute government affairs as referred to in paragraph (1) are the government affairs which are fully the authority of the central government.

    (3) The concurrent governmental affairs as referred to in paragraph (1) are the government affairs divided between the central government and the provincial and regency/city regions.

(4) *The concurrent government affairs submitted to the regions become the basis for the implementation of regional autonomy.*

(5) *The general government affairs as referred to in paragraph (1) are the government affairs which become the authority of the President as the head of government.*

b. Article 11 paragraph (1), paragraph (2), paragraph (3) of the Law Number 23 of 2014 which fully reads:

1) The concurrent governmental affairs as referred to in article 9 paragraph (3) which become the regional authority consist of mandatory governmental affairs and selection of governmental affairs.

2) The governmental affairs shall as referred to in paragraph (1) consist of government affairs relating to basic services and government affairs not related to basic services.

3) The mandatory government affairs relating to basic services as referred to in paragraph (2) are mandatory government affairs which in part constitute basic services.

c. Article 12 paragraph (1), paragraph (2), paragraph (3) of the Law Number 23 of 2014 which fully reads:

1) *The mandatory government service affairs relating to basic services as referred to in Article 11 paragraph (2) include:*

   a. *Education*
   b. *Health*
   c. *Public works and spatial planning*
   d. *Public housing and residential areas*
   e. *Peace, public order and community protection, and*
   f. *Social*

2) *The mandatory government affairs not related to basic services as referred to in Article 11 paragraph (2) include :*

   a. *Labor*
   b. *Women's empowerment and child protection*
   c. *Food*
   d. *land*
   e. *Living environment*
   f. *Population administration and civil registration*
   g. *Community and village empowerment*
   h. *Population and family planning control*
   i. *Transportation*
   j. *Communication and informatics*
   k. *Cooperatives, small and medium businesses*
   l. *Capital investment*

m. Youth and sports

n. Statistics

o. Coding

p. Culture

q. Library

r. Record management

3) The selection of governmental affairs as referred to in Article 11 paragraph (1) include:

a. Marine and fishery

b. Tourism

c. Agriculture

d. Forestry

e. Energy and Mineral Resources

f. Trading

g. Industry

h. Transmigration

d. Article 13 paragraph (1), paragraph (2), paragraph (3), paragraph (4) of the Law Number 23 of 2014 which fully reads:

1) The division of concurrent government affairs between the central government and the provincial and regency/city regions as referred to in Article 9 paragraph (3) is based on the principle of accountability, efficiency, and externality as well as national strategic interests.

2) *Based on the principles as referred to in paragraph (1) criteria for the government affairs which are the authority of the central government are:*

1. *Government affairs whose location is across provincial region or cross country*
2. *Government affairs whose users are cross province or cross country*
3. *Government affairs whose benefit or negative impact are across province or cross country*
4. *Government affairs that the use of its resources is more efficiently if done by the central government and/or*
5. *Government affairs whose roles are strategic for the national interest*

3) *Based on the principles as referred to in paragraph (1) criteria for the government affairs which are the authority of the provincial government are:*

1. *Government affairs whose location is across regency/city regions*
2. *Government affairs whose users are across regency/city*
3. *Government affairs whose benefit or negative impact are across regency/city and/or*

4. Government affairs that the use of its resources is more efficiently if done by the provincial region

4) Based on the principles as referred to in paragraph (1) criteria for the government affairs which are the authority of the regency/city government are:

1. Government affairs whose location is in regency/city regions

2. Government affairs whose users are in regency/city

3. *Government affairs whose benefit or negative impact are only in regency/city and/or*

4. *Government affairs that the use of its resources is more efficiently if done by the provincial region*

e. Article 14 paragraph (1), paragraph (2), paragraph (3), paragraph (4) of the Law Number 23 of 2014 which fully reads:

(1) The administration of government affairs in the sector of forestry, marine and energy and mineral resources is divided between the central government and the provincial region.

(2) Government Affairs in the sector of forestry as referred to in paragraph (1) relating to the

management of regency/city grand forest park shall be the authority of the regency/city region .

(3) Government Affairs in the sector of energy and mineral resources as referred to in paragraph (1) relating to the management of oil and natural gas shall be the authority of the central government.

(4) Government affairs in the sector of energy and mineral resources as referred to in paragraph (1) relating to the direct utilization of geothermal energy in regency/city region shall be the authority of regency/city region.

f. Article 15 paragraph (1), paragraph (2), paragraph (3), paragraph (4), paragraph (5) of the Law Number 23 of 2014 which fully reads:

(1) The division of concurrent government affairs between the central government and the provincial and regency/city regions is listed in the attachment which is an inseparable part of this Law.

(2) Concurrent governmental affairs that are not listed in the attachment to this Law shall become the authority of each level or composition of the government which the determination uses principles and criteria for the division of concurrent government affairs as referred to in Article 13.

(3) Concurrent governmental affairs as referred to in paragraph (2) are determined by presidential regulation.

(4) Changes to the division of concurrent government affairs between the central government and provincial and regency/city regions as referred to in paragraph (1) that do not result in the transfer of concurrent government affairs at another level or composition of government are stipulated by government regulation.

(5) Changes as referred to in paragraph (4) may be made to the extent that they do not conflict with the principle of the criteria for the division of concurrent government affairs as referred to in Article 13.

g. Article 16 paragraph (1) and paragraph (2) of the Law Number 23 of 2014 which fully reads:

(1) The central government in carrying out concurrent government affairs as referred to in article 9 paragraph (3) is authorized to:

a. Stipulate norms, standards, procedures and criteria in the context of administration of the government affairs;

b. Carry out guidance and supervision of the administration of the government affairs shall be the regional authority.

(2) Norms, standards, procedures and criteria as referred to in paragraph (1) letter a in the form of the provisions of the laws and regulation stipulated by the central government as a guideline in the administration of concurrent governmental affairs which are the authority of the central government and become regional authorities.

h. Article 17 paragraph (1), paragraph (2), paragraph (3) of the Law Number 23 of 2014 which fully reads:

1) Regions have the right to determine regional policies to carry out regional government affairs shall be the regional authority

2) Regions in stipulating regional policies as referred to in paragraph (1), shall refer to the norms, standards, procedures and criteria stipulated by the central government.

3) In the case of regional policies made in the context of administration of the government affairs shall be the regional authority do not adhere to norms, standards, procedures and criteria as referred to in paragraph (2), the central

government cancels regional policies as referred to in paragraph (1).

i. Article 21 reads: "*Further provisions regarding the implementation of concurrent governmental affairs are regulated in government regulation*".

j. Article 27 paragraph (1), paragraph (2) and Article 28 paragraph (1) and paragraph (2) of the Law Number 23 of 2014 which fully read:

Article 27:

(1) Provincial regions are given the authority to manage natural resources at sea in their regions.

(2) The authority of the provincial region to manage natural resources at sea as referred to in paragraph (1) includes:

a. Exploration, exploitation, conservation and management of marine wealth outside of oil and natural gas

b. Administrative management

c. Spatial Arrangement

d. Participating in maintaining sea safety

e. Participating in maintaining the country's sovereignty

Article 28:

(1) *Provincial regions which are characterized by islands have the authority to manage natural resources at sea as referred to in Article 27.*

(2) *In addition to having the authority as referred to in paragraph (1), provincial regions which are characterized by islands receive assignment of assistance from the central government to carry out the authority of the central government in the sector of maritime based on the principle of support assignments.*

k. Article 251 paragraph (2), paragraph (3), paragraph (8), and paragraph (4) along the phrase "*cancellation of regency/city regulation and regent/mayor regulation as referred to in paragraph (2) are stipulated by the Governor's decision as the representative of the Central Government"* Law Number 23 of 2014 which fully reads:

(2) Regency/City regulation and Regent/Mayor regulation that conflict with the provisions of the higher laws amd regulations, public interests and/or decency are canceled by the Governor as representative of the Central Government.

(4) ..... *cancellation of Regency/City regulation and Regent/Mayor regulation as referred to in paragraph (2) shall be stipulated by the Governor's*

decision as representative of the Central Government.

(3) In the case that the governor as representative of the Central Government does not cancel the Regency/City Regulation and/or regent/mayor regulation that are contrary to the provisions of the higher laws and regulations, public interests, and/or decency as referred to in paragraph (2), the Ministry shall cancel Regency/City regulation and/or regent/mayor regulation;

(8) *In the case that the administrator of the Regency/City Government cannot accept the decision on the cancellation of the regency/city regulation and the regent/mayor cannot accept the decision on the cancellation of the regent/mayor regulation as referred to in paragraph (4) for reasons that can be justified by the provisions of the laws and regulations, the regent/mayor may submit objections to the Ministry no later than 14 days (fourteen) days from the decision to cancel the regency/city regulation or the regent/mayor regulation.*

13. Whereas all requests of the PETITIONERS regarding:

a. Article 9 paragraph (1), paragraph (2), paragraph (3), paragraph (4), and paragraph (5);

b. Article 11 paragraph (1), paragraph (2), and paragraph (3);
c. Article 12 paragraph (1), paragraph (2), and paragraph (3);
d. Article 13 paragraph (1), paragraph (2), paragraph (3), and paragraph (4);
e. Article 14 paragraph (1), paragraph (2), paragraph (3), and paragraph (4);
f. Article 15 paragraph (1), paragraph (2), paragraph (3), paragraph (4), and paragraph (5);
g. Article 16 paragraph (1) and paragraph (2);
h. Article 17 paragraph (1), paragraph (2), and paragraph (3);
i. Article 21;
j. Article 27 paragraph (1) and paragraph (2);
k. Article 28 paragraph (1) and paragraph (2);
l. Article 251 paragraph (2), paragraph (3), paragraph (8), and paragraph (4) along the phrase, "*cancellation of regency/city regulation and regent/mayor regulation as referred to in paragraph (2) are stipulated by the Governor's decision as representative of the Central Government*";

14. Whereas the articles reviewed in this Petition as written above contradict, or at least are incompatible with the normative methods contained in Article 18 paragraph (1),

paragraph (2), paragraph (3), paragraph (4), paragraph (5) and paragraph (6); Article 18A paragraph (1) and paragraph (2); Article 28C paragraph (2); Article 28D paragraph (1); and Article 24A paragraph (1) of the 1945 Constitution for juridical reasons as follows:

15. Whereas Article 18 of the 1945 Constitution has determined the following normative provisions:
    a. The division of the Unitary State of the Republic of Indonesia to provinces, regencies and cities that have their respective regional government;
    b. The regional government regulates and regulates by themselves the government affairs according to the principle of autonomy and co-administration task;
    c. The regional government has the Regional House of the People’s Representatives (DPRD) which is elected through the General Election;
    d. Governors, Regents and Mayors as heads of regional governments are democratically elected;
    e. The regional government exercises the broadest autonomy, except for the Government affairs determined by the law to be the Central Government affairs;
    f. The regional government has the right to make regional regulation and other regulations to carry out regional autonomy and co-administration task;

g. The composition and procedures for the administration of regional government are regulated in law;

16. Whereas Article 18A of the 1945 Constitution stipulates the following normative provisions:

a. The relationship of authority between the Central Government and the Regions or between the Provinces with Regencies and Cities is regulated by law by taking into account regional specificities and diversity;

b. Financial relation, public services, utilization of natural resources and other resources between the central and regional governments are regulated and carried out fairly and in harmony;

A. ARRANGEMENT FOR THE CLASSIFICATION OF GOVERNMENT AFFAIRS IN ARTICLE 9, ARTICLE 11, ARTICLE 12, ARTICLE 13, ARTICLE 14, ARTICLE 15, ARTICLE 16, ARTICLE 17, ARTICLE 21, ARTICLE 27, AND ARTICLE 28 OF THE LAW NUMBER 23 OF 2014 IS A FORM OF POWER CENTRALISM, LIMITATION ON THE AUTHORITY OF REGENCY/CITY GOVERNMENT, AND FICTITIOUS AUTONOMY MODEL

17. Whereas according to Article 9 of the Law Number 23 of 2014 the power of government which is the authority of the Central Government (President) divided into three, namely: a) absolute government affairs; b) concurrent government affairs; and c) Central Government affairs.

Where according to Article 9 paragraph (2) and paragraph (5) of the Law as such (*a quo*), from the three affairs, 2 affairs are the affairs of the Central Government, namely absolute government affairs which are the authority of the Central Government (President) and central government affairs which are the authority of the President as the Head of Government. Meanwhile according to Article 9 paragraph (3) and paragraph (5) of the Law as such (*a quo*), one affair again is concurrent government affairs, the Central Government **DIVIDES** the authority with provinces and regencies/cities which according to the Law as such (*a quo*), this division of authority which is the entry point and basis for implementing regional autonomy. So, in general all government affairs are under the control of the Central Government or the President except for a portion of concurrent government affairs, which remain the authority of the President or the Central Government to determine the division of these affairs;

18. Whereas Article 9 paragraph (3) and paragraph (4) regarding concurrent government affairs which becomes the basis of regional autonomy can be understood comprehensively and systematically by connecting the article with Article 10, Article 11, Article 12, Article 13, Article 15, Article 16, Article 17, and Article 21 of the Law as such (*a quo*), namely:

a. Whereas Article 10 paragraph (1) and paragraph (2) of the Law as such (*a quo*) states that absolute government affairs include: a. Foreign policy, b. Defense, c. Security, d. Justisi, e. National monetary and fiscal, f. Religion. Where in carrying out these absolute government affairs, the Central Government implements itself or delegates authority to the vertical agencies in the region or the Governor as the representative of the Central Government based on the principle of deconcentration;
b. Whereas Article 11 paragraph (1) states concurrent governmental affairs which are the regional authority consisting of mandatory government affairs and selection of government affairs;
c. Whereas according to Article 11 paragraph (2) and paragraph (3) mandatory government affairs consist of basic government affairs (which in part constitute basic services) and government affairs not related to basic services;
d. Whereas according to Article 12 of the Law as such (*a quo*), mandatory government affairs relating to basic services include: a. Education; b. Health; c. Public works and spatial planning; d. Public housing and residential areas; e. Peace, public order and community protection; and f. social. Meanwhile, the

government affairs not related to basic services include: a. Labor; b. Women's empowerment and child protection; c. Food; d. Land; e. Living environment; f. Population administration and civil registration; g. Community and village empowerment; h. Population and family planning control; i. Transportation; j. Telecommunication and informatics; k. Cooperatives, small and medium businesses; l. Investment; m. Youth and sports; n. Statistics; o. Coding; p. Culture; q. Library; r. Record management. Meanwhile the selected government affairs as referred to in Article 11 paragraph (1) of the Law as such (*a quo*) include: a. Marine and fisheries; b. Tourism; c. Agriculture; d. Forestry; e. Energy and Mineral Resources; f. Trading; g. Industry; and h. Transmigration;

e. Whereas according to Article 13 of the Law as such (*a quo*), the division of concurrent governmental affairs between the central, provincial and regional governments is based on the principle of accountability, efficiency and externality, as well as national strategic interests. However, according to Article 13 paragraph (2) of the Law as such (*a quo*), standards of accountability, efficiency and externalities are "**LIMITED**" with other standards, which is the norm whether the governmental affairs are

across provinces or countries?; and the norms whether the governmental affairs are the users across provinces or countries?; and the norms whether the governmental affairs are the benefit or negative impacts across provinces or countries?; and the norms whether the government affairs are the use of resources more efficiently if carried out by the central government and the norms whether the government affairs have a strategic role for national interests? So indirectly, concurrent government affairs are limited by specific standards from the Central Government;

f. Where the standard of concurrent government affairs which are the authority of the Regional Government are limited "**FOR THE SECOND TIMES LIMITED**" by Article 15 (1), paragraph (2), paragraph (3), paragraph (4), and paragraph (5) of the Law as such (*a quo*), which basically states, the division of concurrent government affairs between the Central, provincial and regency/city governments is listed in the Appendix of the Law. In the case that there are concurrent government affairs not listed in the appendix to the Law as such (*a quo*), it can be determined otherwise after stipulated through **Presidential Regulation**, and in the case that there is a change in the division of

affairs, it can be determined after stipulated through **Government Regulation**. Therefore, it is fairly and clearly, the Central Government has full control over the stipulation of concurrent government affairs which are the authority of the Central Government and the concurrent government affairs which are the authority of the Regional Government. Because all the division of authority shall be determined through Presidential Regulation or Government Regulation which is the legal product of the Central Government. With regard to this, of course the Central Government will intervene and those who have full authority in the stipulation of Presidential Regulation or Government Regulation related to the substance of the division of authority for the concurrent government affairs between the Center and the Regions;

g. Whereas the stipulation of concurrent governmental affairs which has been so limited, "**FOR THE THIRD TIMES LIMITED AGAIN**" through Article 16 paragraph (1) letter a and b which essentially reads: (a) The Central Government is authorized to stipulate norms, standards, procedures and criteria in the context of organizing a government delegation and (b) the Central Government shall carry out guidance and supervision of

the administration of government affairs which become regional authorities.

h. Whereas the Law as such (*a quo*) gives regions the authority to determine their own policies based on Article 17 paragraph (1) of the Law as such (*a quo*) which basically states that the Regional Government is given the authority to determine regional policies to carry out governmental affairs which are the authority of the regions, **BUT** it turns out that the ability to determine the policy itself is **PSEUDO** and **FICTITIOUS.** Based on Article 17 paragraph (3) of the Law as such (*a quo*) states that in the case of regional policies in the context of administering government affairs which are the regional authority do not adhere to norms, standards, procedures and criteria determined by the Central Government, **THEN THE CENTRAL GOVERNMENT CANCELS SUCH REGIONAL POLICIES.** Therefore normatively, through Article 17 paragraph (3) of the Law as such (*a quo*), the regional authority determines its own regional authority "**FOR THE FOURTH TIMES LIMITED AGAIN**", even "**REVOKED**" by the Central Government, because by reasoning the policies of a region are contrary to norms and standards as well as procedures that the Central Government made, the Central Government cancels the regional policy **WITHOUT THROUGH**

THE JUDICATIVE REVIEW MECHANISM IN COURT. (*In connection with the cancellation of this regional regulation, the PETITIONERS shall specifically describe at a separate point in the Principle of this Petition*).

i. Whereas further, the **LIMITATION** is strengthened and increased by the provisions of Article 21 of the Law as such (*a quo*) which stipulates that further provisions regarding the implementation of concurrent governmental affairs are regulated in government regulation (**THE FIFTH LIMITATION**). Thus, there is no more space for the regional governments to move and specifically determine their own government in accordance with their characteristics and uniqueness **because all the spaces related to the type, authority, region, and forms of concurrent government affairs are determined, created, and stipulated by the Government Center;**

19. Whereas with regard to the above description, two constitutional issues are found before the Court through this petition, namely:

a. What is the authority of the Central Government (President) over absolute government affairs and general government affairs as referred to in Article 9 paragraph (1), paragraph (2) and paragraph (5) of the

Law as such (*a quo*) contrary to the basis and principles of regional autonomy the greatest extent as referred to in Article 18 paragraph (2) and paragraph (5) of the 1945 Constitution? and;

b. What is the division of concurrent government affairs as referred to in Article 9 paragraph (3) and paragraph (4) of the Law as such (*a quo*) related to Article 11, Article 12, Article 13, Article 15, Article 16, Article 17, and Article 21 of the Law as such (*a quo*) already in conformity or doest it contradict the basis and principles of regional autonomy to the greatest extent as referred to in Article 18 paragraph (2), paragraph (5), paragraph (6); Article 18A (1) of the 1945 Constitution?

20. Whereas according to Article 18 paragraph (1) and paragraph (2) of the 1945 Constitution, it is expressly stated that the Unitary State of the Republic of Indonesia "**DIVIDED ON**" (**Not COMPOSED OF**) Provinces and Regencies/Cities that have Regional Governments that regulate and manage their own government affairs according to the principle of autonomy and support assistances. Meanwhile according to Article 18 paragraph (5) it is explicitly stated that the Regional Government exercises autonomy to the greatest extent **EXCEPT** the

Government affairs determined by law to be the affairs of the Central Government;

21. Whereas Article 18 paragraph (5) of the 1945 Constitution is known as the **Residue Theory** or the **General Competence Principles** in the principle of regional autonomy, namely, all authorities belong to the regional government **EXCEPT** as limitatively determined by laws belonging to the Central Government or the Central Government hands over all affairs to the Regional Government, except for matters otherwise stipulated by law. The **residue theory** has actually been contained in Article 7 paragraph (1) of the Law Number 22 of 1999 regarding Regional Government which reads, "*Regional authority covers **ALL** authorities in the field of government, **EXCEPT** authority in the field of foreign policy, defense, security, justice, monetary and fiscal, religion and other fields of authority*". More or less the same provisions contained in Article 10 paragraph (1), paragraph (2) and paragraph (3) of the Law Number 32 of 2004 which means that the Regional Government carries out government affairs which are the authority based on the principle of the broadest autonomy and co-administration task to regulate and manage their own government affairs, **EXCEPT** the government affairs which include foreign policy, defense, security, justice, monetary and national fiscal and religion;

22. Whereas the **OPPOSITE** is actually contained in Law Number 23 of 2014 regarding Regional Government as contained in Article 9 paragraph (1), paragraph (2), paragraph (3), paragraph (4) and paragraph (5) of the Law as such (*a quo*), namely, the authority of absolute government affairs, concurrent government affairs and Central Government affairs become the authority of the Central Government (President) **EXCEPT** some of the concurrent government affairs. With regard to concurrent governmental affairs, normatively, in reality the concurrent governmental affairs are not necessarily the authority of Regional Governments. Based on the description above, we find the fact that the Regional Government does not really have the power to determine concurrent government affairs and have no space in carrying out their own government affairs, especially in the broadest autonomy on the basis of:

    a. Concurrent governmental affairs are divided into mandatory government affairs, whether related to basic services totaling 6 points or those not related to basic services totaling 18 points or mandatory government affairs categorized as optional government affairs totaling 8 points **ALREADY STIPULTED** in the Appendix of the Law as such (*a quo*). [vide Article 12

paragraph (1), paragraph (2), paragraph (3) juncto Article 15 paragraph (1) of the Law as such (*a quo*)];

b. The government then stpulates certain criteria to determine which the concurrent government affairs for the Central, Provincial and Regency/City based on the principles of accountability, efficiency, externality and national strategic interests [vide Article 13 paragraph (1), paragraph (2), paragraph (3) and paragraph (4) of the Law as such (*a quo*)];

c. In the case that the Regional Government will increase the authority regarding the concurrent government affairs stipulated in the Appendix of the Law as such (*a quo*), then it shall be determined through Presidential Regulation (vide Article 15 of the Law as such (*a quo*));

d. In the case that the Regional Government will increase the authority, it shall be determined through Presidential Regulation on condition that it does not conflict with the principles and criteria of the Central Government, namely the principle of accountability, efficiency, externality and national interests [vide Article 15 paragraph (4) and paragraph (5) of the Law as such (*a quo*)];

e. The Central Government determines norms, standards, procedures and criteria for the implementation of

concurrent government affairs, including the authority of the Central Government to carry out guidance and supervision of the implementation of concurrent government affairs in the regions [vide Article 16 paragraph (1) letter a and b of the Law as such (*a quo*)];

f. Whereas the Regional Government has the right to make their own policies, the policies shall be in accordance with norms, standards, procedures and criteria as set by the Central Government. If the regional policy is not in accordance with the norms, standards, procedures and criteria as stipulated by the Central Government **then the Central Government cancels** (**not "can cancel"**) the policy. [vide Article 17 paragraph (1), paragraph (2) and paragraph (3) of the Law as such (*a quo*)];

g. Whereas the implementation of concurrent government affairs is determined through government regulation (vide Article 21) which means that the central government determines and regulates all concurrent government affairs;

23. Whereas even in the Law Number 23 of 2014 regarding Regional Government still mentions the principles of regional autonomy, it is not embodied in the Articles of the Law as such (*a quo*), replaced by the principle of the

power of the President as the holder of state power in fully. **In short, the mention of Regional Autonomy through the word "decentralization and deconcentration" as stipulated in Article 5 paragraph (4) of the Law as such (*a quo*), it only refers to mention without content because there is nothing in the other articles in the Law as such (*a quo*) that explains and details what authority can be exercised by the Regional Government to regulate and manage their own government autonomously by using the basis or principles of Deconcentration and Decentralization.**

Therefore, Law Number 23 of 2014 regarding Regional Government is very thick with a centralistic spirit, not decentralized. Even explicitly in the context of the regional government affairs, Article 5 paragraph (4) of the Law as such (*a quo*) mentions the power of the Central Government for affairs of "**government in the region**" not "**regional government**". This means that all government affairs in Indonesia are government affairs that are directly under the control of the Central Government (President). Finally, the regions only have the authority to carry out regional government as a form of extension or "administration" of the Central Government, not to actually carry out the functions of the Regional Government;

24. Whereas based on Article 9 paragraph (1), paragraph (2), paragraph (3), paragraph (4) and paragraph (5) is systematically linked to Article 10, Article 11, Article 12, Article 13, Article 15, Article 16, Article 17 and Article 21 of the Law as such (*a quo*), the Central Government determines the absolute government affairs and the central government affairs, and the Central Government does not intend to impose limits on regions that the concurrent government affairs (outside of absolute and central government) are entirely the authority of the government regions. Due to the fact that the Central Government has re-divided the authority of concurrent governmental affairs between the central, provincial and regency/city which have been rigidly determined in the Appendix of the Law. Not to mention the necessity of Presidential Regulation and Government Regulation in the case of regions implementing policies related to regional authority to regulate and manage their regions;
25. Whereas the division of concurrent governmental affairs if decentralized will become the basis of regional autonomy is entirely dependent on the Central Government. The center government can take it fully, decentralize it to the Province, decentralize it to the Regency/City, use co-administration task or even deconcentration;

26. Whereas normatively the division of government affairs is dominated by the Central Government and the Provincial Government. The Regency/City Governments are only spectators in the Law Number 23 of 2014. Whereas the Regency/City Governments should be the main players in the era of regional autonomy so that the distribution of development can be directly reached to the grassroots directly, not through the Central Government or its geographically remote representatives and emotional;
27. Whereas the division of governmental affairs contained in the Law as such (*a quo*) is just another name for the mention of the authorities of the Central Government because in all three affairs there is the authority of the Central Government. This law expressly provides absolute and centralized power to the President and the Central Government;
28. Whereas from the description above, it does not seem at all the meaning and translation of the Constitutional norms in Article 18 paragraph (2) which confirms "**The provincial, regency and city governments regulate their own government affairs according to the principle of autonomy and support assistances**". With the model of the division of 3 types of governmental affairs in Article 9 of the Law as such (*a quo*), the question that arises is: **Where is the position of the Regency/City government**

affairs according to the principle of autonomy and co-administration task? Because normatively, the three government affairs that are divided in the Law as such (*a quo*) in no way provide space for the existence of separate affairs for the Regency/City government, in which all affairs are controlled, determined, regulated, and divided by the Central Government; and the division ceases only to the Provincial Government based on the principle of deconcentration, not to the Regency/City Government [vide Article 19 paragraph (1)].

29. Whereas the implementation of the principle of deconcentration in Article 1 paragraph (9) is also defined not only given to the governor but also to the regent/mayor. However, in further regulation, the Law as such (*a quo*) does not regulate the provisions concerning the granting of authority based on the principle of deconcentration to the regent/mayor. There is only given to the governor as the representative of the Central Government in the regions as can be seen explicitly in the provisions of Article 10 regarding the division of absolute government affairs and Article 19 regarding concurrent government affairs. This means that the Law Number 23 of 2014 does not place the Regency/City government as the government, in fact it does not give any space whatsoever except what has been determined in

the division of concurrent government affairs that is also regulated by the Central Government;

30. Whereas the regional autonomy as referred to in Article 18 of the 1945 Constitution is decentralization, as said by **Prof. Dr. Bagir Manan** in the Minutes of the Formulation Team for the Amendment of the 1945 Constitution, as follows:

"...regarding decentralization, I always interpret that the decentralization is autonomy. So, I am quite different from the view, for example, some decentralized books are about deconcentration. For me, deconcentration is centralization that I use, in my dissertation, 10 years ago I said, Deconcentration is a softened centralization. So, it is part of centralization. So, for example books like Amrah Muslimin said erfelijk decentralitatie, I don't adhere. Because my understanding that decentralization is autonomy. Well, autonomy is sub-system of unitary state. So, we talk of autonomy as long as we talk about unitary state. So, if people are going to talk about autonomy but not unitary state, it is something that is contrary to the system itself, because autonomy is sub-system of unitary state, is one of the mechanisms of unitary state. So, it is according to my understanding..." (Cited from *Naskah Komprehensif Perubahan Undang-Undang Dasar Negara Republik Indonesia*

1945, Latar Belakang, Proses, dan Hasil Pembahasan (Comprehensive Text of Amendment to the 1945 Constitution of the Republic of Indonesia, Background, Process, and Results of Discussion), 1999-2002, Book IV, Kekuasaan Pemerintahan Negara (State Government Power), Volume II, Revised Edition, Secretary General and Registrar of the Constitutional Court, page 1127).

Whereas however the Law Number 23 of 2014 only mentions the word "decentralization" **5 times** in its torso [vide Article 1 number 8 and number 47, Article 5 paragraph (4), Article 31 paragraph (1), and Article 290 paragraph (1)], where the decentralization is only related to regional structuring and the distribution of the General Allocation Fund (GAF).

In which the legal reality can be understood that the position of Law Number 23 of 2014 does not position decentralization as an important instrument in the implementation of regional autonomy as referred to by Prof. Dr. Bagir Manan above. That is why the Law as such (*a quo*), especially the provisions of Article 9 paragraph (1), paragraph (2), paragraph (3), paragraph (4), and paragraph (5) along with their derivative articles, namely Article 11 paragraph (1), paragraph (2), and paragraph (3), Article 12 paragraph (1), paragraph (2), and paragraph (3), Article 13 paragraph (1), paragraph

(2), paragraph (3), and paragraph (4), Article 15 paragraph (1), paragraph (2), paragraph (3), paragraph (4), and paragraph (5), Article 16 paragraph (1) letter a and b, Article 17 paragraph (1), paragraph (2), and paragraph (3), and Article 21 is not in line with the purpose and meaning of Article 18 paragraph (2) and paragraph (5) of the 1945 Constitution;

31. Whereas if examined further on the meaning of regional autonomy in the Law as such (*a quo*), it was found that the purpose of regional autonomy in the Law is only related to the concurrent government affairs as affirmed in Article 9 paragraph (4) which reads: "*The concurrent governmental affairs submitted to the regions becomes the basis for the implementation of regional autonomy*." Whereas the concurrent government affairs as referred to in Article 9 paragraph (3) are interpreted as the affairs divided between the Central Government, Provincial, and Regency/City Governments. With this composition in which the concurrent government affairs become joint affairs - more precisely those are also the affairs of the Central Government, the question is where is the position of the broadest autonomy in the government affairs for Regional Government? In which affairs the Regional Government has authority that has no the authority of the Central Government at all in it?

32. **Whereas how is it possible that Regency/City Government can regulate its own affairs as mandated by the Constitution Article 18 paragraph (2) above, if the type of affairs granted the authority to regulate itself does not exist at all in the Law as such (*a quo*)?**

33. Whereas based on the description above it appears that the Law as such (*a quo*) reverses the rule of Article 18 paragraph (5) of the 1945 Constitution, from the sentence "*regional government exercises the broadest autonomy, **EXCEPT** the governmental affairs determined by the law to be the central government affairs*", **TO BE** "*The central government carries out all government affairs to the greatest extent, **EXCEPT** which with the permission of the central government, is given authority to the regional government";

34. Whereas the granting of strict regional autonomy in Article 18 paragraph (2) and paragraph (5) of the 1945 Constitution is closely related to the concept of governance in government, not just government. The concept used by Law Number 23 of 2014 generally emphasizes the concept of government solely, namely the approach to the aspects of authority of the government power which is based on the centrality of power. Whereas the purpose of granting regional autonomy is related to governance, namely so that the functions and roles of the

government (regions) can easily bridge the interests of the nearest people because of their positions that are directly related and close to the people in their territory, which in turn can easily realize the people's expectations in the delivery of public services. With the complete removal of the authority and affairs of the regional government itself in Article 9 of the Law Number 23 of 2014, the concept of governance in the government model will be threatened because of the distant position and communication of government affairs with the people, and thus it will make the Regional Government disfunction in important public services such as in the case of natural resource management in their own area;

35. Whereas in addition, the principle of regional autonomy affirmed in Article 18 of the 1945 Constitution is one of the guarding mechanisms of the unitary state of the Republic of Indonesia, as confirmed by **Dr. H. Roeslan Abdulgani** in his view before the Formulation Team of Amendment to the 1945 Constitution, as follows: "then the constitutional system and government of the unitary State should be maintained, **but given the broadest autonomy**…" (*Naskah Komprehensif Perubahan Undang-Undang Dasar Negara Repuiblik Indonesia 1945, Latar Belakang, Proses, dan Hasil Pembahasan, 1999-2002*, Edisi Revisi, Sekjend dan Kepaniteraan MK, page 716). Dr. Roeslan emphasized the

sentence "*given the broadest autonomy*", which can be interpreted that with such broad autonomy, the government relations can be well established and therefore can create the integrity of the nation;

36. Whereas the concept of regional autonomy according to **Prof. Dr. Bagir Manan** can be classified in two models: **broad** and **limited autonomy** (Bagir Manan, "*Menyongsong Fajar Otonomi*", 2001, Yogyakarta, Pusat Studi Hukum Fakultas Hukum UII, page 37). The limited autonomy occurs if: a) the household affairs are determined categorically and their development is regulated in a certain way; b) If the system of supervision and control is carried out in such a way that the autonomous region loses its independence to freely determine the arrangement of the regional household. While the concept of broad autonomy is based on the criteria of all government affairs are basically the regional household affairs, except those determined as central affairs.

    Whereas from the description of the provisions of Article 9 paragraph (1), paragraph (2), paragraph (3), paragraph (4), and paragraph (5) along with their derivative articles, namely Article 11 paragraph (1), paragraph (2), and paragraph (3), Article 12 paragraph (1), paragraph (2), and paragraph (3), Article 13 paragraph (1), paragraph (2), paragraph (3), and paragraph (4), Article

15 paragraph (1), paragraph (2), paragraph (3), paragraph (4), and paragraph (5), Article 16 paragraph (1) letter a and b, Article 17 paragraph (1), paragraph (2), and paragraph (3), and Article 21 of the Law Number 23 of 2014 regarding Regional Government in this Application on **Paragraph Number 18, Number 22, Number 24, Number 28, and Number 29** above clearly and fairly can be understood and concluded that the concept of the regional autonomy implemented by the Law Number 23 of 2014 through the articles reviewed here is limited autonomy model, **NOT BROAD AUTONOMY**, because:

a. There is division of the government affairs categorically, namely absolute, concurrent, and central government in Article 9. Even this categorization is specifically specified in the following articles (Article 11 paragraph (1), paragraph (2), and paragraph (3), Article 12 paragraph (1), paragraph (2), and paragraph (3), Article 13 paragraph (1), paragraph (2), paragraph (3), and paragraph (4), Article 15 paragraph (1), paragraph (2), paragraph (3), paragraph (4), and paragraph (5), Article 16 paragraph (1) letter a and b, Article 17 paragraph (1), paragraph (2), and paragraph (3) and Article 21) and in the Appendix of the Law, so that there is almost no more open space for the regency/city Government in managing their own household

unless specified in the Law and Government Regulation and Presidential Regulation;

b. The supervision and control carried out by the Central Government on the implementation of concurrent governmental affairs carried out by the Regional Government are expressly determined in Article 16 paragraph (1) through the stipulation of norms, standards, procedures, and criteria as well as the implementation of guidance and supervision. Even in implementing the regional autonomy through Regional Regulation and Regional Head Regulation, the Regional Government is threatened with the cancellation of Regional Regulation and Regional Head Regulation by Governors and Ministers as regulated in Article 251 of the Law as such (*a quo*).

37. Whereas lexically, the word "concurrent" used in the Law s such (*a quo*) explicitly confirms the absence of "self-affairs" of regional government because "konkuren" derived from English "concurrent" means "having joint authority" (*joint authority, simultaneous, converging*) (I.P.M. Ranuhandoko, "*Terminologi Hukum Inggris-Indonesia*": 1992, Jakarta, Sinar Harapan, page 153). By using this word denotatively, the lawmaker does indeed want the absence of granting authority (*gezag*) to the regional government autonomously and independently

related to the functions and tasks of government in the region. In this word, the regional government affairs are defined explicitly as part of the power of the Central Government which is jointly implemented with the regional governments. Therefore verbatim, the use of the word "concurrent" has experienced contradictio in terminis/tegenspraak in termen with the meaning and meaning of the word "autonomy" which means self-regulating (*zelfregeling*), according to **Van Vollenhoven**'s teaching, one of them contains the definition of *zelfuitvoering*, namely carrying out self-government (with own jurisdiction) (Sarundajang, "*Arus Balik Kekuasaan ke Daerah*": 1999, Jakarta, Pustaka Sinar Harapan, page 33-34). The word "concurrent" also expressly contradicts literally the meaning of the phrase "regulate and manage itself" as affirmed Article 18 paragraph (2) of the 1945 Constitution. Based on this interpretation of the law grammatically, the provisions of Article 9 paragraph (4) of the Law as such (*a quo*) (following its derivative articles on the elucidation of concurrent governmental affairs) which confirms the concurrent affairs as the basis for the implementation of regional autonomy have lost their intrinsic meaning because they contain elements of contradiction, and extrinsically show and uncover the political objectives of the law from the

legislators to eliminate or at least obscure the essence of regional autonomy contained in Article 18 paragraph (2) and paragraph (5) of the 1945 Constitution;

38. Whereas based on the description above, with all models of control, regulation and supervision conducted by the Central Government on the implementation of concurrent governmental affairs through Government Regulation, Presidential Regulation, and annulment of Regional Regulation/Regional Head Regulation by Ministers and Governors, where are the rights of regency/city government to use their constitutional rights in stipulating regional regulation and other regulations to carry out autonomy and support assistances as referred to in Article 18 paragraph (6) of the 1945 Constitution? Where is also the aspect of "regional specialty and diversity" as affirmed by the Constitution Article 18A paragraph (1) in the pattern of regional development related to the relationship between the Government and the regions, if all affairs are determined and stipulated by the Central Government?

39. Whereas from the description above it can be concluded that the Law Number 23 of 2014 has actually implemented the model of ***fictie zelfbesturend*** or **fictitious autonomy**, because outwardly, the Law mentions and still recognizes the granting of autonomy to the regions, especially the

Regency/City Governments. However, in the reality of law through the norms written therein, there is absolutely no space for the regional autonomy in the Law as such (*a quo*), especially in the broadest sense as referred to in the Constitution as elucidated in **Paragraph Number 28, Number 29, Number 30, Number 31, Number 36, Number 37, and Number 38 of this application**;

40. Whereas therefore it is valid and has legal grounds if the Constitutional Court declares Article 9 paragraph (1), paragraph (2), paragraph (3), paragraph (4), and paragraph (5) along with their derivative articles, namely Article 11 paragraph (1), paragraph (2) and paragraph (3); Article 12 paragraph (1), paragraph (2), and paragraph (3); Article 13 paragraph (1), paragraph (2), paragraph (3), and paragraph (4); Article 15 paragraph (1), paragraph (2), paragraph (3), paragraph (4), and paragraph (5); Article 16 paragraph (1) letter a and b; Article 17 paragraph (1), paragraph (2), and paragraph (3); and Article 21 of the Law Number 23 of 2014 regarding Regional Government contradicts Article 18 paragraph (2), paragraph (5), and paragraph (6) and Article 18A paragraph (1) of the 1945 Constitution;
41. Whereas therefore it is valid and has legal grounds if the Constitutional Court declares that it is null and void of binding legal force Article 9 paragraph (1),

paragraph (2), paragraph (3), paragraph (4), and paragraph (5) along with their derivative articles, namely Article 11 paragraph (1), paragraph (2), and paragraph (3); Article 12 paragraph (1), paragraph (2), and paragraph (3); Article 13 paragraph (1), paragraph (2), paragraph (3), and paragraph (4); Article 15 paragraph (1), paragraph (2), paragraph (3), paragraph (4), and paragraph (5); Article 16 paragraph (1) letter a and b; Article 17 paragraph (1), paragraph (2), and paragraph (3); and Article 21 of the Law Number 32 of 2014 regarding Regional Government.

B. THE PETITIONERS CANNOT EXERCISE THEIR RIGHT TO DEVELOP THEMSELVES IN FIGHTING FOR THEIR RIGHTS COLLECTIVELY TO BUILD SOCIETY, NATION, AND COUNTRY AS GUARANTEED IN ARTICLE 28C PARAGRAPH (2) OF THE 1945 CONSTITUTION.

42. Article 9 paragraph (1), paragraph (2), paragraph (3), paragraph (4), and paragraph (5) along with their derivative articles, namely Article 11 paragraph (1), paragraph (2), and paragraph (3); Article 12 paragraph (1), paragraph (2), and paragraph (3); Article 13 paragraph (1), paragraph (2), paragraph (3), and paragraph (4); Article 15 paragraph (1), paragraph (2), paragraph (3), paragraph (4), and paragraph (5); Article 16 paragraph (1) letter a and b; Article 17 paragraph

(1), paragraph (2), and paragraph (3); and Article 21 Number 23 of 2014 contradicts the Constitution, specifically because it contradicts Article 28C paragraph (2) of the 1945 Constitution, namely, "every person has the right to develop themselves in fighting for their rights collectively to build society, nation, and country", with juridical reasons as follows:

1) Whereas the Regional Government and the Regional House of People's Representatives (DPRD) get the mandate from the people of each region through the mechanism of (General) Election directly chosen by the people. The Regional Government and Regional House of People's Representatives (DPRD) are collective entities and public legal entities those are established based on the Constitution [vide Article 18 paragraph (3) and paragraph (4) of the 1945 Constitution] which is collection of various or representatives of legally authorized political parties given the mandate to run the wheels of the regional government, to perform services, to fight for their regional communities and to promote and to improve the welfare of their regional communities based on the principle of the broadest autonomy;
2) Whereas then based on the description of the Petition in Number IV letter A above, it appears clear and

fair, the articles reviewed in the Law as such (a quo) **CASTRATE** the right of the Regional Government and the Regional House of People's Representatives (DPRD) which have the mandate to run the wheels of the regional government, to develop and improve the welfare of their regional communities based on the principle of the broadest regional autonomy;

3) Whereas today the Regional Government and the Regional House of People's Representatives (DPRD) do not have the authority to carry out functions for the management of their natural resources so that it has implication for the income and financial resources of each region;

4) Whereas the Regional Government and the Regional House of People's Representatives (DPRD) also cannot make addition and amendment to the Law as such (*a quo*) with regard to concurrent government affairs given to Regional Government, because they have to go through a long process until the issuance of Presidential Regulation or Government Regulation that is not the authority and rights of regional government;

5) Whereas if the Regional Government and the Regional House of People's Representatives (DPRD) issue a policy, the policy must be in accordance with the

norms, standards, criteria and procedures set by the Central Government. Where if the policy is contrary to the norms, standards, criteria and procedures referred to, the Central Government through the Governor may cancel the policy of the Regent/Mayor and the the Regional House of People's Representatives (DPRD) of Regency/City immediately. What is more unfair is if the Regent/Mayor objects to the cancellation of the policy, the the Regional House of People's Representatives (DPRD) and the Regent can submit an objection to the Ministry who is actually representative of the Central Government and the Governor's Superior through the Executive Review mechanism. There is no fair Judicial Review mechanism as the principles of good governance and the rule of law. How is it that the Central Government will process, examine and adjudicate the objections of the Regional Government and the Regional House of People's Representatives (DPRD) while the Central Government becomes the "party" complained of the objection. In simple language, how can a judge be fair and impartial if he/she is also a Defendant and has direct interests in a case;

6) Whereas with the inability of the Regional Government and the Regional House of People's Representatives

(DPRD) as well as regional residents to manage the natural resources of their respective regions, it results in loss of regional opinion which is beneficial to the local community;

7) Whereas as a result the Regional Government and the Regional House of People's Representatives (DPRD) as legal and legitimate collective political entities and institutions in the democratic system and formed by the Constitution through direct election by the people are unable to develop themselves in fighting for their rights collectively to build their regional communities as guaranteed by Article 28C paragraph (2) of the 1945 Constitution.

43. Whereas it is therefore valid and lawful if the Constitutional Court declares Article 9 paragraph (1), paragraph (2), paragraph (3), paragraph (4), and paragraph (5) along with their derivative articles, namely Article 11 paragraph (1), paragraph (2) and paragraph (3); Article 12 paragraph (1), paragraph (2), and paragraph (3); Article 13 paragraph (1), paragraph (2), paragraph (3), and paragraph (4); Article 15 paragraph (1), paragraph (2), paragraph (3), paragraph (4), and paragraph (5); Article 16 paragraph (1) letter a and b; Article 17 paragraph (1), paragraph (2), and paragraph (3); and Article 21 of the Law Number 32 of

2014 regarding Regional Government contradicts Article 28C paragraph (2) of the 1945 Constitution;

44. Whereas it is therefore valid and lawful if the Constitutional Court declares null and void of binding legal force Article 9 paragraph (1), paragraph (2), paragraph (3), paragraph (4), and paragraph (5) along with their derivative articles, namely Article 11 paragraph (1), paragraph (2), and paragraph (3); Article 12 paragraph (1), paragraph (2), and paragraph (3); Article 13 paragraph (1), paragraph (2), paragraph (3), and paragraph (4); Article 15 paragraph (1), paragraph (2), paragraph (3), paragraph (4), and paragraph (5); Article 16 paragraph (1) letter a and b; Article 17 paragraph (1), paragraph (2), and paragraph (3); and Article 21 of the Law Number 32 of 2014 regarding Regional Government.

C. THE PROVISIONS OF ARTICLE 14 PARAGRAPH (1), PARAGRAPH (2), PARAGRAPH (3), AND PARAGRAPH (4), ARTICLE 27 PARAGRAPH (1), PARAGRAPH (2) AND ARTICLE 28 PARAGRAPH (1) AND PARAGRAPH (2) OF THE LAW LAW NUMBER 23 OF 2014 REGARDING REGIONAL GOVERNMENT CAUSES INJUSTICE AND DISHARMONY IN THE MANAGEMENT OF NATURAL RESOURCES AND OTHER REGIONAL RESOURCES, THEREFORE IT CONTRADICTS ARTICLE 18 PARAGRAPH (2) AND PARAGRAPH (5) JUNCTIS

ARTICLE 18A PARAGRAPH (2) AND ARTICLE 28C PARAGRAPH (2) OF THE 1945 CONSTITUTION

45. Whereas the provisions of 14 paragraph (1), paragraph (2), paragraph (3), and paragraph (4) junctis Article 27 paragraph (1) and paragraph (2); and Article 28 paragraph (1) and paragraph (2) of the Law Number 23 of 2014 is contrary to the Constitution, especially because it contradicts Article 18 paragraph (2), paragraph (5), and Article 18A paragraph (2) of the 1945 Constitution, with basic:

    1) Whereas the norm of Article 14 paragraph (1) of the Law as such (*a quo*) which essentially reads, "*the implementation of government affairs in the sector of forestry, maritime affairs, as well as energy and mineral resources is divided between the central government and the Provincial Region*", **EXPRESSLY AND EXPLICITING ELIMINATING THE REGENCY/CITY POSITION AS SUBJECTS** that can manage natural resources in the sector of forestry, marine affairs, energy and mineral resources. For the context of forestry, based on Article 14 paragraph (2) of the Law as such (*a quo*), Regencies/Cities are only entitled to manage the regency/city botanical park which is the authority of regency/city region (or those in their regions). While for the geothermal context, based on

Article 14 paragraph (4) of the Law as such (*a quo*), regencies/cities are only entitled to make direct use of geothermal which is the authority of regency/city region (or those in their regions);

2) Whereas as stated in the attachment to the Law Number 23 of 2014, regarding Division of the Concurrent Government Affairs between the Central Government and Provincial and Regency/City Regions (vide Article 15) seems fair and clear that **REGENCY/CITY DOES NOT HAVE AUTHORITY** in the most affair of forest, energy and mineral resources;

3) Whereas in the matrix of division of the Concurrent Government affairs between the Central Government and the Provincial and Regency/City Regions, letter BB Regarding Division of the Government Affairs in the Forestry Sector is known:

a. **REGENCY/CITY REGION DOES NOT HAVE AUTHORITY** relating to the "sub-affair of forest plan".

b. **REGENCY/CITY REGION DOES NOT HAVE AUTHORITY** relating to the "sub-affair of forest management".

c. **REGENCY/CITY REGION DOES NOT HAVE AUTHORITY** relating to the "sub-affair of conservation of biological natural resources and their ecosystems, which consists of 5 points, except for the affair of community forest park in the regency area".

d. **REGENCY/CITY REGION DOES NOT HAVE AUTHORITY** relating to the "sub affair of education and training, counseling and community empowerment in the forestry sector".

e. **REGENCY/CITY REGION DOES NOT HAVE AUTHORITY** relating to the "sub- affair of watershed management".

f. **REGENCY/CITY REGION DOES NOT HAVE AUTHORITY** relating to the "sub-affair of forest control".

4) Whereas in the matrix of division of the Concurrent Government affairs between the Central Government and the Provincial and Regency/City Regions, letter CC Regarding Division of the Government Affairs in the Sector of Energy and Mineral Resources is known:

a. **REGENCY/CITY REGION DOES NOT HAVE AUTHORITY** relating to the "sub-affair of Geology". The Central Government together with the Provincial Government control all available authorities (the Central has 7 authorities, the Province has 3 authorities).

b. **REGENCY/CITY REGION DOES NOT HAVE AUTHORITY** relating to the "sub-affair of mineral and coal". The Central Government together with the Provincial Government control all available authorities (the

Central has 11 authorities and the Province has 7 authorities).

c. **REGENCY/CITY REGION DOES NOT HAVE AUTHORITY** relating to the "sub-affair of oil and gas". The Central Government controls all these authorities.

d. **REGENCY/CITY REGION DOES NOT HAVE AUTHORITY** relating to the "sub-affair of renewable energy". The Central Government together with the Provincial Government control all available authorities (the Central has 9 authorities and the Province has 3 authorities).

5) Whereas as long as the Law as such (*a quo*) is still valid it can be ensured that regency/city authority over forestry, energy and mineral resources affairs will not change because it is impossible to add and/or implement changes and/or add new policies for the sector of forestry, energy and mineral resources without going through the Central Government. Because normatively, the changes to the regional authority can only be done through Presidential Regulation and/or Government Regulation which are made by the Central Government;

6) Based on the matrix of affair division mentioned above, is there still a government affair in the sector of forestry, energy and mineral resources

which is the regency/city authority as guaranteed in Article 18 paragraph (5) of the 1945 Constitution or Article 18 paragraph (5) of the 1945 Constitution does not apply and changes the sentence from "the *regional government exercises the broadest autonomy,* ***EXCEPT*** *the governmental affair determined by law to be the central government affair"* ***TO BE*** *"The central government exercises all government affairs to the greatest extent,* ***EXCEPT*** *for the Central Government's permission is given the authority to the regional government"?*

7) Whereas the norm in Article 14 paragraph (1) of the Law as such (*a quo*) regarding the **ABSENCE OF REGENCY/CITY AUTHORITY** to manage marine issues is confirmed through Article 27 paragraph (1) and (2) which explicitly states that: *(1) the Provincial Region is given the authority to manage natural resources at sea in the area; (2) the Provincial authority to manage marine natural resources as referred to in paragraph (1) includes: a. Exploration, exploitation, conversion and management of marine resources outside of oil and gas; b. Administrative arrangement; c. Spatial arrangement; d. Participating in maintaining security at sea; e. Participating in defending the country's sovereignty.*

In the context of province characterized by islands, the **ABSENCE OF REGENCY/CITY AUTHORITY** to manage marine issues is affirmed and repeated, as referred to in Article 28 paragraph (1) and paragraph (2) of the Law as such (*a quo*) which reads: *(1) the Provincial Region that has archipelago characteristics has the authority to manage natural resources at sea as referred to in Article 27; (2) In addition to have the authority as referred to in paragraph (1), the provincial region which is characterized by islands receives assignment of assistance from the central government to carry out the authority of the central government in the sector of maritime based on the principle of co-administration task.*

8) Whereas as stated in the Attachment to the Law Number 23 of 2014 (vide Article 15), regarding Division of the Concurrent Government Affairs between the Central Government and the Provincial and Regency/City Regions, it seems fair and clear that **REGENCY/CITY DOES NOT HAVE AUTHORITY** in the most affair of marine. In the matrix of division of the Concurrent Government affairs between the Central Government and the Provincial and Regency/City Regions, letter Y

regarding Division of Affairs in the Sector of Maritime and Fishery Affairs, is known:

a. **REGENCY/CITY REGION DOES NOT HAVE AUTHORITY** relating to the "sub-affair of marine, coastal and small islands". The Central Government together with the Provincial Government control all available authorities (the Central has 6 authorities, the Province has 3 authorities).

b. **REGENCY/CITY REGION DOES NOT HAVE AUTHORITY** relating to the "sub-affair of control of marine and fisheries resources". The Central Government together with the Provincial Government control all available authorities.

c. **REGENCY/CITY REGION DOES NOT HAVE AUTHORITY** relating to the "sub affair of processing and marketing". The Central Government together with the Provincial Government control all available authorities (the Central has 3 authorities, the Province has 1 authority).

d. **REGENCY/CITY REGION DOES NOT HAVE AUTHORITY** relating to the "sub affair of fish quarantine, quality control and safety of fishery products". The Central Government controls all available authorities.

e. **REGENCY/CITY REGION DOES NOT HAVE AUTHORITY** relating to the "sub affair of human resource development, marine and fisheries communities"

9) Whereas as long as the Law as such (*a quo*) is still valid it can be ensured that the Regency/City authority on maritime and fisheries affairs will not change because it is impossible to add and/or implement changes and/or add new policies for the sector of fishery and marine without going through the Central Government. Because normatively, the changes to the regional authority can only be through Presidential Regulation and/or Government Regulation which is made by the Central Government and not constitute the domain of authority and rights of the government and regional government;

10) Whereas therefore, it is fair and clear, all regency/city areas which are in coastal areas or have sea areas or are in the characteristics of regency/city islands can not do much to manage their own natural resources in the sector of marine and fishery. It leads to the inability of regencies/cities to maximize the management of their natural marine resources. The result is certainly the level of community welfare has the potential to be not optimal;

11) Based on the matrix of affair division mentioned above, is there still a government affair in the marine sector which is the regency/city authority as guaranteed in Article 18 paragraph (5) of the 1945 Constitution or Article 18 paragraph (5) of the 1945 Constitution does not apply and changes the sentence from "the *government region execises the broadest autonomy,* ***EXCEPT*** *the governmental affairs determined by law to be the central government affairs"* ***TO BE*** *"The central government exercises all government affairs to the greatest extent,* ***EXCEPT*** *for the central government's permission is given the authority to the regional government"?*

46. Whereas the regional autonomy as the PETITIONERS have described in the previous section, focuses on the lowest center of power in the Constitution. This is as guaranteed in Article 18 paragraph (1) of the 1945 Constitution, "*The Unitary State of the Republic of Indonesia is* ***DIVIDED*** *over provincial areas where the provincial region is* ***DIVIDED*** *over Regencies/Cities, each of provinces, regencies and cities have regional governments. regulated in the Law"*. Thus the regional government which has the lowest point of authority is the regency/city government;

47. Whereas when regency/city does not have authority in the sector of forestry, marine, energy and mineral resources as referred to in Article 14 paragraph (1), paragraph (2), paragraph (3), and paragraph (4) junctis Article 27 paragraph (1) and paragraph (2), and Article 28 paragraph (1) and paragraph (2) then it is contrary to Article 18 paragraph (2) and paragraph (5) and Article 18A paragraph (2) of the 1945 Constitution;
48. Whereas based on the description above it appears that the Law as such (*a quo*), reverses the rule of Article 18 paragraph (5) of the 1945 Constitution, from the sentence "the *regional government exercises the broadest autonomy, **EXCEPT** the governmental affairs determined by law to be the central government affairs" **TO BE** "The central government exercises all government affairs to the greatest extent, **EXCEPT** for the central government permission is given the authority to the regional government";*
49. Therefore, it is fair and clear that the Regional Government and Regional Government are impaired by the existence of the articles reviewed here because they are contrary to the principles and basis of the broadest regional autonomy as guaranteed in Article 18 paragraph (2) and paragraph (5) and Article 18A paragraph (2) of

the 1945 Constitution which requires justice in the utilization of natural resources and other resources;

50. Whereas by not involving the regency/city government in the management of natural and mineral resources in their own regions results in injustice, even though Article 18A paragraph (2) of the 1945 Constitution emphasizes the importance of such management based on the principles of justice and harmony. This is because:

    a. Initially Article 18 paragraph (2) of the 1945 Constitution has placed the position of Provincial Government equal with regency/city government in terms of the regulation of their respective areas based on the principle of autonomy (borrowing the term **John Rawls** as original position). Of course the equality is understood here only in the context of being equal to the Regional Government, not in a position, for example, on territorial size. In this position, it is very reasonable if the regency/city government is also given an equal portion/opportunity in the management of natural resources and other resources in its area.

    b. Whereas the principle of equality here can be attributed to what **John Rawls** refers to as the principle of equal social and economic resources, in addition to the principle of equal political liberty in referring to the types of equality (**Carlos Santiago**

Nino, "*The Constitution of Deliberative Democracy*": Yale University Press, 1996, page 87). This principle is the basis for the state consensus (consensual theory) that gives autonomy to the region in our Constitution, as can be seen in the debate about the birth of amendments in Article 18, Article 18A, and Article 18B which are contained in "*Naskah Komprehensif Perubahan Undang-Undang Dasar Negara Republik Indonesia 1945, Latar Belakang, Proses, dan Hasil Pembahasan (Comprehensive Text of Amendment to the 1945 Constitution of the Republic of Indonesia, Background, Process and Results of Discussion), 1999-2002, Book IV, Kekuasaan Pemerintahan Negara (State Government Power), Volume II "(Revi*sed Edition, Secretary General and Registrar of the Constitutional Court). This consensus is of course based on the assumption that the Unitary State of the Republic of Indonesia was founded on the basis of "imaginary agreement" (hypothetical consent) from all Indonesian people in each region, especially in the Regency/City which is the smallest unit of government mentioned in the Constitution. And this agreement requires that there is also a fair division related to what is owned jointly (primary goods) in the country which is founded jointly. The Equality is what

in turn creates or becomes the foundation for the creation of *justice as fairness*.

Whereas in the realization of this principle, what can be concretely made is a mechanism for granting strict "concession" to the Regional Government as part of the party in the Unitary State of the Republic of Indonesia.

Based on these theories and principles, the elimination of government affairs and the management rights of natural resources and other resources in the region for the Regional Government is a kind of "**contract cancellation/consensus**" of the existence of the Unitary State of the Republic of Indonesia, or at least a kind of effort to eliminate the right of equality, and in turn it becomes an effort to eliminate justice for the people in the region and the Regional Government, especially the regencies/cities.

In this understanding, the views of experts such as Prof. Dr. Bagir Manan, Dr. Roeslan Abdulgani, and others in the discussion of amendment to Article 18, Article 18A, and Article 18B of the 1945 Constitution recorded in "*Naskah Komprehensif Perubahan Undang-Undang Dasar Negara Republik Indonesia 1945, Latar Belakang, Proses, dan Hasil Pembahasan, 1999-2002, Buku IV, Kekuasaan Pemerintahan Negara*, Volume II" (Revised

Edition, Secretary General and Registrar of the Constitutional Court) become relevant and important to note. That is the importance of regional autonomy as an adhesive and guardian of the unity and integrity of the Unitary State of the Republic of Indonesia.

Justice is a very important keyword and it means to see the relation of government, especially in the management of natural resources and other resources because in this case the principles of governance and economic strengthening are needed by people and the Regional Government, especially regencies/cities, as an integral part of Indonesian citizens and government.

c. Whereas Article 18A paragraph (2) of the 1945 Constitution also mandates the management and utilization of natural resources and other resources in "harmony" manner. The word "harmonious" which comes from the word "harmony" according to the "Indonesian Dictionary" means "in accordance, similarity, harmonious". This means that there are **position and portion** that match or are the same between the parties so as to produce harmony. In the context of the Law Number 23 of 2014, there is no "similarity", "compatibility" in the management of these resources, as seen in the norms of the articles being reviewed, which therefore cannot result in "harmony" in the

government context. With the abolition of rights, authority, and involvement of regency/city government in the concurrent government affairs, especially in the management of natural resources and other resources, it has certainly resulted in imbalance, inequality, mismatch, and consequently injustice for the region.

d. Whereas in terms of position and territory, natural resources and other resources in this country are basically located and are in the Regency/City area as the smallest unit of the regional government referred to in the Constitution. Reasonably and rationally, the sense of belonging to the resources is certainly closer emotionally, culturally, and materially to the regency/city government and its people. The regency/city government feels entitled to "ownership" of natural resources and other resources within their respective territories. Moreover, if there is damage and environmental impacts that occur, the community and regency/city government will first feel it. With such position, is it fair if the people and regency/city government are not involved at all and given authority in the management and utilization of the natural resources and other resources? Where is the application of the principle of "***justitia est ius suum cuique tribuere***" (justice is given to everyone what is their

right) in the context of natural resource management and others? Even though this principle has been embedded in Article 18A paragraph (2) of the 1945 Constitution, namely justice in the use of natural resources and others;

51. Whereas in addition to the aforementioned reasons, juridical reasons are related to the view of the unconstitutionality of Article 9 and its derivative articles related to the division of concurrent governmental affairs as described by the PETITIONERS in **paragraph 18 to 39 of Subject Matter of the Petition** is also considered relevant (mutatis mutandis) for legal reasons - and applies in relation to the argumentation of unconstitutionality of Article 14 paragraph (1), paragraph (2), paragraph (3), and paragraph (4) in conjunction with Article 27 paragraph (1) and paragraph (2) and Article 28 paragraph (1) and paragraph (2) of the Law Number 23 of 2014, because these last articles are also a derivative part of the elucidation of concurrent government affairs that specifically regulates natural resources and others for the area;
52. Whereas therefore it is valid and has legal basis if the Constitutional Court states Article 14 paragraph (1), paragraph (2), paragraph (3), and paragraph (4) junctis Article 27 paragraph (1) and paragraph (2) and Article 28

paragraph (1) and paragraph (2) of the Law Number 23 of 2014 regarding Regional Government contradicts Article 18 paragraph (2) and paragraph (5) and Article 18A paragraph (2) of the 1945 Constitution;

53. Whereas therefore it is valid and has legal basis if the Constitutional Court declares that it is null and void of legal force binding Article 14 paragraph (1), paragraph (2), paragraph (3), and paragraph (4) in conjunction with Article 27 paragraph (1) and paragraph (2) and Article 28 paragraph (1) and paragraph (2) of the Law Number 23 of 2014 regarding Regional Government;

54. Whereas the provisions of Article 14 paragraph (1), paragraph (2), paragraph (3), and paragraph (4) in conjunction with Article 27 paragraph (1) and paragraph (2) and Article 28 paragraph (1) and paragraph (2) of the Law Number 23 of 2014 contradicts Article 28C paragraph (2) of the 1945 Constitution namely, "*every person has the right to develop themselves in fighting for their rights collectively to build society, nation and country*", on the basis of:

    1) Whereas the Regional Government and the Regional House of People's Representatives (DPRD) of Regency/City get the mandate from the people of each region through the mechanism of (General) Election directly chosen by the people. Regional Government

and Regency/City Government are collective entities that are established based on the Constitution [vide Article 18 paragraph (3) and (4) of the 1945 Constitution] which is a collection of various political parties that are legally given the mandate to run the wheels of regional government, to carry out service, to fight for the people of their region and to promote and to improve the welfare of their local communities based on the principle of the broadest autonomy.

2) Whereas then based on the description in **paragraph Number 45 to Number 51** above, it appears fair and clear that the articles reviewed here **CASTRATE** the rights of the Regional Government and the Regional House of People's Representatives (DPRD) of regency/city who have the mandate to run the regional government, promote and improve the welfare of their local communities based on the principle of the broadest regional autonomy in the sector of forestry, marine, energy and Mineral Resources.

3) Whereas today the Regional Government and the Regional House of People's Representatives (DPRD) of regency/city do not have the authority to carry out functions for the management of their natural resources, especially in the sector of forestry,

marine, energy and mineral resources so that it has implication for the reduction in the sources of income and finances of each region.

4) Whereas the main characteristic that shows an autonomous region is able to carry out regional autonomy, it is on the ability of regional finances. This means that the autonomous region shall have the authority and ability to explore their own financial resources, manage and use their own finances which are sufficient to finance the administration of their regional government. Where the dependence on central assistance shall be as minimal as possible, so that the Regional Original Revenue (PAD) shall be the largest financial source, which is supported by the central and regional financial balance policy as a basic prerequisite in the state government system.

5) Whereas the Regional Government and the Regional House of People's Representatives (DPRD) of regency/city also cannot make addition and amendment to the Law as such (*a quo*) with regard to the concurrent government affairs given to the regency/city government because they have to go through a long process until the issuance of Presidential Regulation or Government Regulation.

6) Whereas if the Regional Government and the Regional House of People's Representatives (DPRD) of regency/city issue policy, the policy shall be in accordance with the norms, standards, criteria and procedures stipulated by the Central Government. Where if the policy contradicts the norms, standards, criteria and procedures referred to, the Central Government through the Governor can cancel the policies of the Regional Government and Regency/City Government immediately. What is even more unfair is if the Regional Government and the Regional House of People's Representatives (DPRD) of regency/city object to the cancellation of the policy, the Regional Government and the Regional House of People's Representatives (DPRD) of regency/city can submit an objection to the Ministry who is actually representative of the Central Government and the Governor's "superior" through the Executive Review mechanism. There is no fair and impartial Judicial Review mechanism as the principles of good governance and the rule of law. How is it possible that the Central Government will process, examine and adjudicate the objection of the Regional Government and the Regional House of People's Representatives (DPRD) of regency/city while the Central Government

becomes the Party complained of the objection. In simple language, how a Judge can be fair and impartial if he/she is also Defendant and has a direct interest in a case.

7) Whereas with the inability of the Regional Government and the Regional House of People's Representatives (DPRD) of regency/city to manage the natural resources of their respective area results in loss of regional income that is beneficial to the people of their region.

8) Whereas as a result the Regional Government and the Regional House of People's Representatives (DPRD) as legal and legitimate collective political entities and institutions in the democratic system and formed by the Constitution through direct election by the people are unable to develop themselves in fighting for their rights collectively to develop their local community, the people who live in the territory and country of the Republic of Indonesia as guaranteed by Article 28C paragraph (2) of the 1945 Constitution.

55. Whereas related to the division of governmental affairs concerning the management of natural resources, especially mineral and coal, the Court has emphasized the importance of the principle of justice in the division of roles and portions between the central government and the

regional government, particularly regencies/cities. Other principles that shall become the foundation in building a pattern of government relation in accordance with the Constitution are the principles of the broadest autonomy, political democracy, and regional empowerment. This can be seen in the consideration of the **Court's Decision Number 10/PUU-X/2012**, dated November 22, 2012 as follows (page 93-95):

"[3.16.3] Considering, whereas the philosophical basis for granting the broadest autonomy in the region in managing its own government affairs as stipulated in Article 18 paragraph (2) and paragraph (5) of the 1945 Constitution is in the context of political democracy in the relation between the regional government and the central government. The granting of autonomy to the region is one form of state recognition of the existence of diverse regions in Indonesia to regulate their own autonomous government affairs. The granting of autonomy is also intended to empower the region and can accelerate policy making in government affairs that can be done by the region itself so that it is more effective and efficient. In essence, the 1945 Constitution as can be read in Article 18 paragraph (5) requires the granting of the remaining authority to the regions, namely all authorities in carrying out government affairs other than

those granted to the central government. This means that the 1945 Constitution in principle requires the granting of more authority to the regions and the central government only holds authority in strategic government affairs to guarantee the sovereignty of the state and the territorial integrity of the Republic of Indonesia, and additional authority, namely the authority in carrying out government affairs that are coordinating, synchronizing, standardizing, evaluation and control to ensure effectiveness, harmony and balance in the administration of government. The Law 32 of 2004, determines the division of governmental affairs between the government and regional governments, namely those that are the central government affairs, including: i) absolute or exclusive affairs which are the central government authority, namely authority in foreign politics, defense, security, justice, monetary affairs and national and religious fiscal; and ii) the government affairs other than those which are the absolute authority of the government and are not delegated to the regions. The regional government authority in principle includes all government affairs that do not include the central government affairs which, according to the Law 32 of 2004, is divided into two government affairs, namely government affairs that are mandatory and those that are

selection. The division of government affairs is only a way to determine which affairs are mandatory and that are facultative affair submitted to the regions, which depend on the ability of natural resources. The Constitution emphasizes that the relationship of authority between the Government and regional government is regulated and carried out fairly and in accordance with the law (Vide Article 18A paragraph (2) of the 1945 Constitution). Without intending to review the Law 32 of 2004 or other Law that contains the division of governmental affairs and authority between the Government and regional government, even though they are not the object of the SKLN, they can be the object of constitutional review, namely in the case that the division of governmental affairs is found to be contrary to the principles of the constitution".

[3.16.4] … According to the Court, to determine the division of affairss that are facultative shall be based on the spirit of the constitution that gives the broadest autonomy to the region. …

Whereas in addition to that, the Court also needs to consider other aspects which are also the spirit of the constitution in the division of government affairs, namely the broadest autonomy, political democratization and regional empowerment mandated by the constitution.

According to the Court, the management and exploitation of natural resources of Minerba (Mineral and Coal Mining) has a direct impact on the area which is mining business area, both environmental impacts that affect the quality of natural resources and the lives of the local community concerned and economic impacts in the context of community welfare in the region. Therefore it is not wise and contrary to the spirit of the constitution if the region has no authority at all in determining WP (Mining Area), WUP (Mining Business Area) as well as the border and area of WIUP (Mining Business License Area). Even though the Law regarding Mineral and Coal Mining (Minerba) regulates before the government stipulates WP, WUP as well as the border and area of WIUP, it shall coordinate with the regional government first, according to the Court, it is not sufficient for the constitutional protection of the rights and authority of the region in determining policies on natural resources in the region, especially Mineral and Coal Mining (Minerba). Therefore to fulfill the principles of political democracy, regional empowerment and the broadest autonomy, it is fair if the regional government also has the authority to determine WP, WUP and the border and area of WIUP, not just to coordinate as determined by the Law regarding Mineral and Coal Mining. …"

56. Whereas the norm contained in the Constitutional Court decision as such (*a quo*) is very clear and firm, namely the provisions regarding the position of the regional government granted "coordinative rights" in the management of Mineral and Coal Mining (Minerba) resources are clearly contrary to the Constitution, **MOREOVER, NO AUTHORITY AT ALL IS GIVEN** as contained in the norms of the articles of the Law Number 23 of 2014 regarding Regional Government reviewed in this petition. **From this legal fact, it is clearly illustrated that the Lawmakers did not read and/or even deliberately ignored the Court's Decision as such (*a quo*) in formulating the Law Number 23 of 2014 regarding Regional Government which consequently harmed the interests and constitutional rights of the PETITIONERS, and generally the community in the regency/city area;**
57. Whereas because it is valid and has legal basis if the Constitutional Court declares Article 14 paragraph (1), paragraph (2), paragraph (3), and paragraph (4) junctis Article 27 paragraph (1) and paragraph (2) and Article 28 paragraph (1) and paragraph (2) of the Law Number 23 of 2014 regarding Regional Government contradicts Article 28C paragraph (2) of the 1945 Constitution;
58. Whereas it is therefore valid and has legal basis if the Constitutional Court declares null and void of legal

force binding Article 14 paragraph (1), paragraph (2), paragraph (3), and paragraph (4) in conjunction with Article 27 paragraph (1) and paragraph (2), and Article 28 paragraph (1) and paragraph (2) of the Law Number 23 of 2014 regarding Regional Government;

D. ARTICLE 251 PARAGRAPH (2), PARAGRAPH (3), PARAGRAPH (8), AND PARAGRAPH (4) ALONG THE PHRASE "... *CANCELLATION OF REGENCY/CITY REGULATION AND REGENT/MAYOR REGULATION AS REFERRED TO IN PARAGRAPH (2) SHALL BE STIPULATED BY THE GOVERNOR'S DECISION AS REPRESENTATIVE OF THE CENTRAL GOVERNMENT* ..." THE LAW NUMBER 23 OF 2014 IS CONTRARY TO ARTICLE 18 PARAGRAPH (6) IN CONJUNCTION WITH ARTICLE 28D PARAGRAPH (1) AND ARTICLE 24A PARAGRAPH (1) OF THE 1945 CONSTITUTION.

59. Whereas the provisions of Article 251 paragraph (2), paragraph (3), paragraph (8) and paragraph (4) along the phrase "*cancellation of Regency/City regulation and Regent/Mayor regulation as referred to in paragraph (2) stipulated by the Governor's decision as representative of the Central Government*" the Law Number 23 of 2014 is contrary to the Constitution, specifically contrary to Article 18 paragraph (6) of the 1945 Constitution namely, "*The regional government has the right to determine regional regulation and other regulations to carry out autonomy and co-administration task*", and Article 28D (1)

of the 1945 Constitution, namely, "*every person has the right to recognition, guarantee, protection and certainty of law that is fair and equal treatment before the law*", and Article 24A paragraph (1) regarding the constitutional authority of the Supreme Court on the basis of legal consideration as follows:

1) Whereas Article 251 paragraph (2), paragraph (3), paragraph (8), paragraph (4) along the phrase "*cancellation of regency/city regulation and regent/mayor regulation as referred to in paragraph (2) stipulated by the Governor's decision as representative of the Central Government*" the Law Number 23 of 2014 contains the norm that Regional Regulation or Regional Head Regulation that have been established by regency/city government that is considered to be in conflict with the provisions of higher laws, public interests and/or decency are canceled by the governor as representative of the Central Government;
2) Whereas with regard to the cancellation, the regency/city government may submit an objection to the Ministry within 14 days after the decision on cancellation is received by the regency/city government;

3) Whereas as regulated in the Law Number 23 of 2014, the Regency/City Government is very difficult to add or change authority related to the needs of the Regional Government in the concurrent government affairs that are considered an important part of regional autonomy. Addition or change of authority for the concurrent government affairs can only be done based on Presidential Regulation or Government Regulation. Therefore the Regional Government will use other rights as guaranteed by the Law as such (*a quo*) to establish authority in the field of concurrent government affairs. At this point, it appears that the Regional Government has the authority to determine regional regulation as guaranteed by Article 18 paragraph (6) of the 1945 Constitution. However, the facts are wrong, because the Central Government through the governor can at any time cancel Regional Regulation or Regional Head Regulation if deemed contrary to the provisions of the higher laws and regulations, public interest and/or decency are canceled. The cancellation is only Executive Review, not Judicial Review, in which the regent or mayor can only submit objections, not appeal to the Ministry;

4) Whereas the reasons for cancellation, "*contrary to public interest*" or "*contrary to decency*" are certainly understandable. However, the reason for the cancellation, "*contrary to the provisions of the higher laws and regulations*", creates its own confusion. Because based on the Law Number 23 of 2014, the Central Government stipulates the norms, standards, procedures and criteria related to the governmental affairs in the field of concurrent [vide Article 16 paragraph (1)]. So based on a simple mind, the Central Government, through the governor, can at any time cancel the Regional Regulation or Regency/City Regulation for the concurrent government affairs by arguing against the norms, standards, procedures and criteria that the Central Government has stipulated. Meanwhile, the objection/appeal process is carried out against the Government which canceled. As a result, the regency/city government cannot make Regional Regulation and Regional Head Regulation concerning the concurrent government affairs that it does not have. In other words, the constitutional rights of regent/mayor and the Regional House of People's Representatives (DPRD) as guaranteed by Article 18 paragraph (6) of the 1945 Constitution which states that "*The regional*

government has the right to determine regional regulation and other regulations to carry out autonomy and co-administration task", which in the end the value of the broadest regional autonomy guaranteed by Article 18 paragraph (5) which reads, "*the regional government exercises the broadest autonomy, except the governmental affairs determined by law to be the central government affairs*", also violated by Article 251 paragraph (2), paragraph (3), paragraph (8), and paragraph (4) along the phrase "*cancellation of Regency/City regulation and Regent/Mayor regulation as referred to in paragraph (2) determined by the Governor's decision as representative of the Central Government*" the Law Number 23 of 2014;

5) Whereas the mechanism for cancelling Regional Regulation and Regional Head Regulation determined by the Law as such (*a quo*) through the governor and filing an objection to the Ministry is contrary to Article 31 of the Law Number 5 of 2004 regarding Amendment to the Law Number 14 of 1985 regarding the Supreme Court in conjunction with the Law Number 3 of 2009 regarding the Second Amendment to the Law Number 14 of 1985 regarding the Supreme Court and the Law Number 12 of 2011 regarding "Formation of Laws and

Regulations" which states that the regulation under the law can be reviewed for validity if they conflict with the law to the Supreme Court. Whereas thus created legal uncertainty and therefore contradicts Article 28D paragraph (1) of the 1945 Constitution. The question is which institution has the right to cancel Regional Regulation/Regional Head Regulation which is laws and regulations under the Law, the Governor and the Ministry or the Supreme Court? A more substantial question can be asked here, can Regional Regulation/Regional Head Regulation be canceled by governor or Ministry as part of executive institution, especially by the Ministry who is not directly elected by the people? Where is the division of political trias in this process where the executive institution also takes the role of the judiciary, because executive review should not be right to the position of canceling a legal product made by an institution directly elected by the people through the (General) Election?

6) Whereas the mechanism for reviewing a regulation under the Law that conflicts with the Law to the Supreme Court is solely aimed at upholding the principles and ideals of democracy and the rule of law (*rechtstaat*). Where the law as supreme commander

not power. This certainly becomes a precedent in which the rule of law (*rechstaat*) which is the basis of the Unitary State of the Republic of Indonesia shifts to the state of power (*maschstaat*);

7) Whereas because the right to make legislative products by the Regional Government is a right granted directly by the Constitution in Article 18 paragraph (6), then the right should only be canceled by the State Institution that has been given authority by the Constitution, namely the Supreme Court as the holder and executor of judicial power as referred to in Article 24A paragraph (1), namely, only the Supreme Court is given the authority to adjudicate at the cassation instance, reviewing the laws and regulations under the Law against the Law. Where according to Article 7 paragraph (1) of the Law Number 12 of 2011 regarding "*Formation of Laws and Regulations*", Provincial/Regency/City Regulations are types of legislation that are hierarchically under the Law. Therefore, according to the Constitution only the Supreme Court has the right to cancel or adjudicate an application for revocation of Regional Regulation (Perda), not any other institution;

60. Whereas it is therefore valid and has legal basis if the Constitutional Court states Article 251 paragraph (2),

paragraph (3), paragraph (8), and paragraph (4) along the phrase "*cancellation of Regency/City regulation and Regent/Mayor regulation as referred to in paragraph (2) stipulated by the Governor's decision as representative of the Central Government*" the Law Number 23 of 2014 regarding Regional Government contradicts Article 18 paragraph (6), Article 28D (1), and Article 24A paragraph (1) of the 1945 Constitution;

61. Whereas it is therefore valid and has legal basis if the Constitutional Court declares that it is null and void of having legal force binding Article 251 paragraph (2), paragraph (3), paragraph (8), and paragraph (4) along the phrase "*cancellation of Regency/City Regulation and Regent/Mayor regulation as referred to in paragraph (2) stipulated by the Governor's decision as representative of the Central* Government" the Law Number 23 of 2014 regarding Regional Government;

E. SOME OF THE RULES OF THE LAW THAT ARE REVIEWED CREATE LEGAL UNCERTAINTY BECAUSE THEY CONFLICT WITH OTHER SPECIALIST LAW

62. Whereas some of the provisions of the article reviewed above have been specifically regulated in several other technical law (*lex spesialis*) that are in accordance with the spirit of regional autonomy;

63. Whereas among the several provisions are:

SECTOR	LAW	ARTICLE	IN LAW NO 23/2014
Electricity	Law Number 30 of 2009 regarding Electricity	Article 5 paragraph (3) regulates the authority of Regency/City Government	In Appendix CC the Division of Government Affairs in the Sector of Energy and Mineral Resources Number 5 the authority of Regency/City Government is removed.
Management of Coastal Areas and Small Islands	Law Number 1 of 2014 regarding Amendment to the Law Number 27 of 2007 regarding Management of Coastal Areas and Small Islands	Article 50 paragraph (3) authorizes the Regent/Mayor to grant and revoke location permits	Appendix of the Law 23/2014 Part I Letter Y and provisions of Chapter V of the Law 23/2014 only Provinces have authority related to islands
Mineral and Coal Mining	Law Number 4 of 2009 regarding Mineral and Coal Mining	Article 8 clearly regulates the authority of regency/city government	Based on the concurrent authority in Appendix CC the division of Government affairs in the Sector of Energy and Mineral Resources Number 2 clearly the regency/city

			government is not given authority
Forestry	Law Number 41 of 1999 regarding Forestry	Article 17 regulates the formation of forest management for regencies/cities.	Article 14 clearly only mentions the Center and Province in the forestry sector.
Cancellation of Regional Regulation (Perda)	Law Number 5 of 2004 regarding Amendment to the Law Number 14 of 1985 regarding the Supreme Court in conjunction with the Law Number 3 of 2009 regarding the Second Amendment to the Law Number 14 of 1985 regarding the Supreme Court and the Law Number 12 of 2011 regarding Formation of Laws and Regulations	Article 31 states that the Supreme Court is the only institution that can cancel legal products under the Law as Regional Regulation	The Ministry and the Governor can cancel the Regional Regulation.

64. Whereas based on the legal facts above, the provisions of the Law Number 23 of 2014, particularly Article 9, Article 14, Article 15, Article 251 paragraph (2), paragraph (4), paragraph (3) and paragraph (8) contain

provisions which are different and contradictory to the provisions in other special law which can thereby create confusion and legal uncertainty, which is therefore contrary to Article 28D paragraph (1) of the 1945 Constitution;

65. Whereas based on differences in the provisions of legislation above, the condition of legal certainty (*rechtzakerheid*) cannot be realized because of the diversity of prevailing norms related to the Law that is specific in certain fields such as electricity, mining and minerals, and forestry. This is not in line with the mandate of Article 28D of paragraph (1) which guarantees fair legal certainty for everyone before the law;

F. THE ENTIRE LAW SHOULD BE CANCELED BECAUSE IT IS CONTRARY TO THE CONSTITUTION

66. Whereas because the articles which the Petitioners request to be declared unconstitutional are the essence (heart) of the Law Number 23 of 2014 regarding Regional Government, if the Court considers these articles contrary to the Constitution, then the Law Number 23 of 2014 and the amendments (Law Number 2 of 2015 in conjunction with the Law Number 9 of 2015) become the loss of spirit and are no longer useful, because the core of regional government norms is in the provisions of Article 9 which divides the three government affairs,

especially in concurrent government affairs. Where this is the basis of the entire division of the authority of the Central, Provincial, Regency/City in the implementation of regional autonomy. The following articles are only derivation and elucidation from, and are built on the basic paradigms and provisions contained in Article 9;

67. Whereas other provisions concerning regional head have been regulated in the Law Number 1 of 2015 in conjunction with the Law Number 8 of 2015 regarding "Election of Governor, Regent and Mayor". While other provisions regarding the Regional House of People's Representatives (DPRD) have also been regulated in the Law Number 17 of 2014 regarding "People's Consultative Assembly, People's Representative Council, Regional Representative Council, and Regional House of People's Representatives". In addition, several general provisions regarding personnel and administration of regional government have also been regulated in the Law Number 5 of 2014 regarding "State Civil Apparatus" and the Law Number 30 of 2014 regarding "Government Administration". Even in Article 137 of the Law Number 5 of 2014 expressly states that the provisions concerning Regional Personnel that is regulated in Chapter V of the Law Number 32 of 2004 regarding Regional Government is declared revoked and not apply. This means

that the provisions concerning regional personnel is sufficiently regulated in the Law Number 5 of 2014;

68. Whereas therefore it is legally reasonable for the Court to consider the entire Law Number 23 of 2014 along with its amendments in the Law Number 2 of 2015 regarding "Stipulation of Government Regulation in lieu of the Law Number 2 of 2014 regarding the Amendment to the Law Number 23 of 2014 regarding Regional Government into Law" (State Gazette of the Republic of Indonesia 2015 Number 24, Supplement to the State Gazette of the Republic of Indonesia Number 5657) juncto the Law Number 9 of 2015 regarding "the Second Amendment to the Law Number 23 of 2014 regarding Regional Government" (State Gazette of the Republic of Indonesia of 2015 Number 58, Supplement to the State Gazette of the Republic of Indonesia Number 5679) contradicts the 1945 Constitution and states it is invalid and not legally binding;

69. Whereas the reasons for canceling the entire Law are in addition to legal basis, also in accordance with the previous Court decisions, namely:

    a. Decision of the Constitutional Court Number 001-021-022/PUU-I/2003, dated December 15, 2004, related to cancellation of the Law Number 20 of 2002 regarding Electricity;

b. Decision of the Constitutional Court Number 006/PUU-IV/2006, dated December 7, 2006 related to cancellation of the Law Number 27 of 2004 regarding the Truth and Reconciliation Commission;

c. Decision of the Constitutional Court Number 11-14-21-126-136/PUU-VII/2009, dated March 31, 2010, related to cancellation of the Law Number 9 of 2009 regarding Educational Legal Entities;

d. Decision of the Constitutional Court Number 28/PUU-XI/2013, dated February 3, 2014, related to cancellation of the Law Number 17 of 2012 regarding Cooperatives;

e. Decision of the Constitutional Court Number 85/PUU-XI/2013, dated February 18, 2015 related to cancellation of the Law Number 7 of 2004 regarding Water Resources.

70. Whereas in the case that the Court grants the petition of the PETITIONERS, that happens is a legal vacuum so that the PETITIONERS do not have a legal basis for implementing regional autonomy government. Therefore, it is appropriate and reasonable for the Court to stipulate the Law Number 32 of 2004 regarding Regional Government (State Gazette of the Republic of Indonesia of 2004 Number 125 and Supplement to the State Gazette of the Republic of Indonesia Number 4437) along with its

amendments as long as the provisions governing regional government shall be valid again until the formation of new Regional Government Law and Regional Autonomy which is in accordance with the 1945 Constitution;

G. THE APPLICATION OF THE ARTICLES BEING REVIEWED HAS CAUSED REAL LOSSES FOR THE PETITIONERS AND THE LOCAL COMMUNITY

71. Whereas although all technical regulations from the central government in the form of Government Regulation and Presidential Regulation have not yet been issued and approved to implement the provisions in the Law as such (*a quo*), the provisions of the articles reviewed have been implemented in the regions because of the Law as such (*a quo*) has become the *ius constitutum* in the government affairs. Implementation of the provisions in the articles being reviewed has resulted in problems that are very detrimental to the community and will continue to potentially have a serious impact on public services because of the division and limitation of authority that exist in the regency/city government;

72. Whereas among the several issues that have been raised at this time related to the implementation are:

NO	AFFAIRS	AUTHORITY	LEGAL SOURCE/ARTICLE REVIEWED	PROBLEM/LOSS
1	SECONDARY AND SPECIAL EDUCATION	Provincial Government	Article 12 paragraph (1) letter a in conjunction with	- Permits and affairs of educators and educational

			Article 15 paragraph (1), Appendix I - A. Division of Government Affairs in the Sector of Education	staff of secondary education are in the provincial government. This means that all matters of secondary school and equivalent are managed by the province. Determination of the allocation of the number of schools, facilities, teachers, and related matters is determined and financed by the provincial government. - Regency/city government is ready to submit this authority with all the consequences. However, in its legal reality, the assets of state secondary school and equivalent building are all in the ownership of the regency/city government. The regency/city

				government wants the provincial government to build its own secondary school and equivalent and the existing building assets will be turned into primary school according to the authority of the regency/city government. - As a result there will be issues regarding the certainty of guaranteeing secondary education services for the community. While the capacity and ability of the provincial government to finance all secondary schools in its province is not necessarily sufficient. - On the other hand, there are issues regarding the certainty of the source of salary for all

				secondary school education personnel because the regency/city government is no longer entitled to finance them. - There is no longer the sub-department of secondary school in the regency/city because there is no authority. Secondary school teachers and education personnel manage their administrative problems in the province.
2	MARINE AND FISHERY	Provincial Government	Article 27 paragraph (1), (2) and Article 28, Appendix Y Division of Affairs in the Sector of Marine and Fishery	- Because the regency/city government is only given authority related to the empowerment of small fishermen and the management and operation of the Fish Auction Place (TPI), all permits and affairs at the sea area shall

				be administered in the province. As a result, many fishermen and fishery entrepreneurs have to travel a long time and distance to the province to manage the administration and the time is very long due to the accumulation of licenses from all agencies/cities. Time and cost efficiency is a problem faced by people who live in this sector.
3	FORESTRY	Central and province	Article 14 paragraph (1) and Appendix BB. Government Affairs in the Sector of Forestry	- Forest domiciled in regency/city area cannot be utilized at all by local communities, especially indigenous people. The indigenous people shall deal directly with the center or province for the issue of forest use that has long been

				the customary territory of local communities in the regency/city.
4	ENERGY AND MINERAL RESOURCES	Central and Province	Article 14 paragraph (1) and appendix CC. Government Affairs in the Sector of Energy and Mineral Resources	- Category C mining excavation (such as sand, etc.) which used to have sufficient permits at village or sub-district level, now have to manage permits to the province. As a result, many people miners are unable to continue their lives for this mine because they are unable to make permits to the province. - Permit affair in the province accumulate from all regency/city areas resulting in time delays. Normally, obtaining a permit is only one week because it is made at village/sub-

				district or regency/city government level, now it takes months. - The amount of regional revenue and Regional Government Budget (APBD) of regency/city has consequently dropped dramatically because there is no income from local mining fees. - The Department of Energy and Mineral Resources (ESDM) Office in the regency/city is dissolved and as a result there are problems in the regulation of employees in the regency/city.

73. Whereas the aforementioned problems will be able to increase and increasingly burden the position of local communities in the regencies/cities along with the issuance of technical provisions from the central government that do not directly understand and know the problems faced by communities in the regency/city level

which are scattered in the entire archipelago with a variety of uniqueness and diversity of their respective problems. On the other hand, the local community views that the regency/city government as their closest government is **part of the state element** responsible for their problems, moreover the regional head and members of the Regional House of People's Representatives (DPRD) of regency/city they have directly elected through the (General) Election;

H. PETITION FOR EXAMINATION AND DECISION QUICKLY

74. Whereas the Law Number 23 of 2014 was promulgated on October 2, 2014, which means that this Law is still relatively new and has not been implemented entirely. Based on the provisions of Article 410 of the Law as such (*a quo*), the entire Government Regulations contains implementing rules for the Law as such (*a quo*) shall be determined no later than two years after the Law as such (*a quo*) is stipulated. This means that in October 2016 all legal products derived from the Law as such (*a quo*) shall be made, and by then the entire norms of the Law shall have been applied;

75. Whereas therefore at this time, the Central Government is in the process of making technical rules regarding the implementation of regional government as instructed by the Law as such (*a quo*) through Presidential Regulation

or Government Regulation. A quick examination and decision on this petition can be useful to provide legal certainty related to the process so that no legal product is made by the Central Government which then differs from the decision to be made by the Court in relation to this petition which will create more legal confusion;

76. Whereas this Law is a Law which is very central and vital in the implementation and translation of government work in realizing the objectives and mandates of the Constitution as stipulated in the Preamble of the 1945 Constitution and becomes the main basis for the implementation of the wheels and implementation of regional government which is directly related to the livelihoods of people of Indonesia. Therefore the application of the norms and provisions contained in the Law as such (*a quo*), especially concerning the division of authority of government affairs as stipulated in Article 9 and its derivatives, is very crucial and significant in the realization of the tasks of regional government;

77. Whereas based on the provisions of the Law Number 1 of 2015 in conjunction with the Law Number 8 of 2015 regarding Election of Governors, Regents and Mayors stipulated on December 9, 2015 is the day of simultaneous elections for regional head throughout Indonesia for the

first stage. At this stage, hundreds of regional heads will be democratically elected in various regions. After that, the first thing that will be done by all elected regional heads is to run the wheels of regional government, where the Law being reviewed here is the legal basis for implementing regional government. Whereas the Law as such (*a quo*) is under review in the Court. With these considerations in mind, the PETITIONERS appeal to the Constitutional Court to examine, adjudicate and decide on this petition quickly in order to provide legal certainty for elected regional head later in the first stage to carry out and implement the mandate of their people in the regions in carrying out regional autonomy in order prosperity and welfare of their respective regions;

V. CLOSING

78. Whereas Amendment to Article 18, Article 18A, and Article 18B of the 1945 Constitution through Amendment to the General Meeting of the People's Consultative Assembly (MPR) in 2000, according to **Prof. Dr. Jimly Asshiddiqie** has changed the format of our state form from the form of a "rigid" unitary state to a "dynamic" unitary state. This is due to two things: a) the possibility of federalistic arrangement in the relationship between the center and regional government; b) the possibility of

developing autonomous policies that are pluralistic, in the sense that each region can apply different patterns of autonomy. The diversity of these patterns of relationship is evidenced by the acceptance of the principle of special autonomy for the Provinces of Aceh and Papua (Jimly Asshiddiqie, "*Konstitusi dan Konstitusionalisme Indonesia*": 2005, Jakarta, Konstitusi Press, page 275). The same thing can also be seen in the acceptance of the specificities of the Provinces of DKI Jakarta and Yogyakarta in the system of the unitary state of Indonesia

79. Whereas the uniqueness and peculiarities of the regional autonomy model and Indonesia decentralization after amendment of the 1945 Constitution have also been recognized by **Gary F. Bell**, Lecturer and Professor of the Law Faculty of National University of Singapore (NUS) in his writing as follows:

"*The Indonesian model is unique in that it does not fit perfectly into any specific model. For political and historical reasons, a federation was not an option for Indonesia which is described by the Constitution as a unitary state. Nonetheless the Constitution as amanded in 2000 (second amandment) does create regional authorities (provinces, regencies, and cities) which are democratically elected and it enshrines the principle of*

*regional antonomy and authorises the local government to adopt regulations. More importantly through article 18 (5), the Constitution grants the regional governments the broadest autonomy (*otonomi seluas-luasnya*) effectively giving the residual powers to the local government – unless a statute specifically grants a power to the central government, that power belongs to local government. All power of the state in principle belong to the regional government"*

The translation is as follows:

"Model (otonomi daerah) Indonesia adalah unik dalam arti ia tidak pas secara sempurna dimasukkan dalam model lainnya. Karena alasan-alasan politik dan sejarah, model negara federal bukanlah sebuah pilihan Indonesia, yang mana telah ditetapkan oleh Konstitusi bahwa bentuk negara Indonesia adalah Negara Kesatuan. Akan tetapi, Konstitusi yang diamandemen pada tahun 2000 (Amandemen Kedua) membentuk pemerintahan daerah (provinsi, kabupaten, kota) yang dipilih secara demokratis dan menetapkan prinsip otonomi daerah, serta memberikan kewenangan pemerintahan daerah untuk membentuk peraturan daerah. Hal yang lebih penting adalah berdasarkan Pasal 18 ayat (5), Konstitusi memberikan otonomi seluas-luasnya kepada pemerintahan daerah yang secara efektif memberikan kewenangan residu kepada pemerintahan daerah –kecuali UU menyatakan secara

khusus sebagai kewenangan Pemerintah Pusat. Seluruh kekuasaan negara pada dasarnya milik pemerintahan daerah" (Gary F. Bell, "*Decentralisation in Indonesia -Theory and Practice*", Jurnal Hukum Bisnis, Business Law Development Foundation, Vol. 23 Number 1, 2004, page 7, cited from Dr. Edie Toet Hendratno, SH., M.Si., "*Negara Kesatuan, Desentralisasi, dan Federalisme*": 2009, Yogyakarta, Graha Ilmu, page 221-222)

80. Whereas the uniqueness, plurality and dynamism of the autonomy and decentralization model adopted by the 1945 Constitution through the Amendment process and the long struggle of the nation's history were thought by the reformers making Amendment of the 1945 Conctitution in the People's Consultative Assembly (MPR) through in-depth discussions with various components of the nation at that time, in empiricism has proven successful in saving this nation from various problems, including related to national integrity. That in its later journey, the implementation of regional autonomy has experienced many distortions and problems due to technical aspects of government relation and politics that are very dynamic, should not sacrifice the values and philosophies that have been formulated and agreed upon by formers of the 1945 constitution through amendments to the reform period. The uniqueness of the Indonesian model, as Gary

F. Bell said above, and the dynamism and plurality of the Constitutional model, as mentioned by Prof. Jimly Asshiddiqie, should be celebrated and grateful for as a "state consensus" and a "new path" that will continue to defend the future of the Republic of Indonesia in realizing the ideals of his country, until a new consensus is formulated in the upcoming amendment to the 1945 Constitution;

81. Whereas the Law Number 23 of 2014 in the important articles concerning the division of government affairs as elucidated in the Subject Matter of the Petition above has damaged and wants to eliminate the uniqueness, peculiarity, plurality, and dynamism of regional autonomy and decentralization in the style of Indonesia as contained in the Constitution of Article 18, Article 18A, and Article 18B by changing the basic consensus of the country only through the law. In other languages, the legislators as such (*a quo*) have taken an ahistorical attitude or at least forgotten the vital history of state related to the pattern of government relation in this country documented in the Constitution as the highest source of law in the republic. It is to the Constitutional Court as the "Guardian of the Constitution" that is both a product of post-amendment reforms to the 1945 Constitution such as regional

autonomy, the PETITIONERS return and submit this issue to be decided as fairly as possible;

VI. PETITUM (CLAIM)

Whereas based on the elucidation, reasons and legal facts above, the Petitioners request the Constitutional Court Judges to decide:

1. Granting the petition of the Petitioners entirely;
2. Declaring Article 9 paragraph (1), paragraph (2), paragraph (3), paragraph (4), and paragraph (5); Article 11 paragraph (1), paragraph (2), and paragraph (3); Article 12 paragraph (1), paragraph (2), and paragraph (3); Article 13 (1), paragraph (2), paragraph (3), and paragraph (4); Article 14 paragraph (1), paragraph (2), paragraph (3), and paragraph (4); Article 15 paragraph (1), paragraph (2), paragraph (3), paragraph (4), and paragraph (5); Article 16 paragraph (1) and paragraph (2); Article 17 paragraph (1), paragraph (2), and paragraph (3); Article 21; Article 27 paragraph (1) and paragraph (2); Article 28 paragraph (1) and paragraph (2); Article 251 paragraph (2), paragraph (3), paragraph (8) and paragraph (4) along the phrase "*Cancellation of Regency/City Regulation and Regent/Mayor Regulation as referred to in paragraph (2) Stipulated by the Governor's Decision as Representative of the*

Central Government" the Law Number 23 of 2014 regarding Regional Government (State Gazette of the Republic of Indonesia of 2014 Number 244 and Supplement to the State Gazette of the Republic of Indonesia Number 5587) contradicts the 1945 Constitution of the Republic of Indonesia;

3. Declaring Article 9 paragraph (1), paragraph (2), paragraph (3), paragraph (4), and paragraph (5); Article 11 paragraph (1), paragraph (2), and paragraph (3); Article 12 paragraph (1), paragraph (2), and paragraph (3); Article 13 (1), paragraph (2), paragraph (3), and paragraph (4); Article 14 paragraph (1), paragraph (2), paragraph (3), and paragraph (4); Article 15 paragraph (1), paragraph (2), paragraph (3), paragraph (4), and paragraph (5); Article 16 paragraph (1) and paragraph (2); Article 17 paragraph (1), paragraph (2), and paragraph (3); Article 21; Article 27 paragraph (1) and paragraph (2); Article 28 paragraph (1) and paragraph (2); Article 251 paragraph (2), paragraph (3), paragraph (8), and paragraph (4) along the phrase "*Cancellation of Regency/City Regulation and Regent/Mayor Regulation as referred to in paragraph (2) Stipulated by the Governor's Decision as Representative of the Central Government*" the Law Number 23 of 2014

regarding Regional Government (State Gazette of the Republic of Indonesia of 2014 Number 244 and Supplement to the State Gazette of the Republic of Indonesia Number 5587) does not have binding legal force.

4. Instructing to include this decision in the State Gazette of the Republic of Indonesia as appropriate.

Or alternatively decide:

1. Granting the petition of the Petitioners entirely;
2. Declaring the Law Number 23 of 2014 regarding Regional Government (State Gazette of the Republic of Indonesia of 2014 Number 244 and Supplement to the State Gazette of the Republic of Indonesia Number 5587) and its amendments contradict the 1945 Constitution of the Republic of Indonesia.
3. Declaring the Law Number 23 of 2014 regarding Regional Government (State Gazette of the Republic of Indonesia of 2014 Number 244 and Supplement to the State Gazette of the Republic of Indonesia Number 5587) and the amendments do not have binding legal force.
4. Declaring the Law Number 32 of 2004 regarding Regional Government (State Gazette of the Republic of Indonesia of 2004 Number 125 and Supplement to the State Gazette of the Republic of Indonesia Number

4437) and its amendments as long as it relates to the provisions concerning regional government affairs which are temporarily re-applied until there is a new law governing Regional Autonomy and Regional Government.

5. Instructing to include this decision in the State Gazette of the Republic of Indonesia as appropriate.

Or if the Constitutiona Court Judges decide otherwise, we request the fairest possible decision (*ex aequo et bono*).

[2.2] Considering, whereas in order to substantiate their postulates, the Petitioners have proposed letters/writings as instruments of evidence having been marked as exhibit P-1.A to exhibit P-35C as follows:

1. Exhibit P-1.A : Photocopy of Resident ID Card on behalf of Mardani H. Maming (General Chairman of APKASI);
2. Exhibit P-1.B : Photocopy of Resident ID Card on behalf of Prof. Dr. Ir. H.M. Nurdin Abdullah, M.Agr. (Secretary General of AKPASI);
3. Exhibit P-1.C : Photocopy of Notarial Deed Number 15, dated October 3, 2005, before the Notary Aryanti Artisari, SH., M.Kn., regarding the Deed of Establishment of Indonesian District

Cooperation (BKKS);

4. Exhibit P-1.D : Photocopy of Notarial Deed Number 26, dated May 6, 2009, before the Notary Sutjipto, SH., regarding Amendment to the Articles of Association of the Association of Indonesian District Governments;

5. Exhibit P-1.E : Photocopy of Deed Number 9 dated January 6, 2012 before the Notary Aryanti Artisari, SH., M.Kn., regarding Declaration of Decision of the Extraordinary National Conference (Munaslub) the Association of of Indonesian District Governments;

6. Exhibit P-1.F : Photocopy of Decree of the Ministry of Law and Human Rights Number AHU-50.AHA.01.07,tahun 2012, dated April 5, 2012, regarding Ratification of the Legal Entity of the Association of of Indonesian District Governments;

7. Exhibit P-1.G : Photocopy of Registered Certificate Number Pem-00585/WPJ.06/KP.0103/2009, dated August 5, 2009, regarding Registered Statement of Taxpayer Number 02.369.021.7-025.000 on behalf of the Association of of Indonesian District Governments;

8. Exhibit P-1.H — Photocopy of Deed Number 43 dated October 19, 2015 before the Notary Aryanti Artisari, SH., M.Kn., regarding Declaration of Decision of the National Conference (Munas) the Association of of Indonesian District Governments abbreviated APKASI;

9. Exhibit P-2.A : Photocopy of Resident ID Card on behalf of OK Arya Zulkarnaen (Regent of Batu Bara);

10. Exhibit P-2.B : Photocopy of Resident ID Card on behalf of Selamat Arifin (Chairman of the Regional House of People's Representatives (DPRD) of Batu Bara);

11. Exhibit P-2.C : Photocopy of Resident ID Card on behalf of Suwarsono (Deputy Chairman of the Regional House of People's Representatives (DPRD) of Batu Bara);

12. Exhibit P-2.D : Photocopy of Resident ID Card on behalf of Syafrizal (Deputy Chairman of the Regional House of People's Representatives (DPRD) of Batu Bara);

13. Exhibit P-2.E : Photocopy of Decree of the General Election Commission Number 22/Kpts/KPU-Kab-002.964812/ 2013, dated September 27, 2013 regarding Determination of Candidate Pair of

Regent and Deputy Regent of Batu Bara Regency Elected in the General Election of Regent and Deputy Regent of Batu Bara Regency in 2013;

14. Exhibit P-2.F : Photocopy of Decree of the DPRD of Batu Bara Regebcy Number 17/K/DPRD/2014 dated December 24, 2014 regarding Determination of the Names of Candidates for the Chairman of the Regional House of People's Representatives of Batu Bara Regency for the period of 2014 - 2019;

15. Exhibit P-2.G : Photocopy of Minutes of the Plenary of Chairman of the Regional House of People's Representatives of Batu Bara Regency Number 009/BA-DPRD/2015, dated October 13, 2015 regarding Approval for filing lawsuit of the Law Number 23 of 2014 regarding Regional Government to the Constitutional Court together with the Regent of Batu Bara;

16. Exhibit P-2.H : Photocopy of Excerpt of the Ministry of Domestic Affairs Decree Number 131.12-7246 of 2013 dated December 12, 2013 regarding Ratification of Appointment of the Regent of Batu Bara, North Sumatra Province;

17. Exhibit P-3.A : Photocopy of Resident ID Card on behalf of Ir. H. Nasaruddin, M.M. (Regent of Central Aceh);

18. Exhibit P-3.B : Photocopy of Decree of the Independent Commission for Election of Central Aceh Regency Number 67/Kpts/KIP-AT-001.434492/2012 dated May 15, 2012 regarding Determination of Candidate Pair of Regent and Deputy Regent Elected in the General Election of Regent and Deputy Regent in Central Aceh Regency in 2012;

19. Exhibit P-3.C : Photocopy of Decree of the Ministry of Home Affairs Number 131.11-512 of 2012 dated August 3, 2012 regarding Dismissal of the Acting Regent of Central Aceh and Ratification of Appointment of the Regent of Central Aceh, Aceh Province;

20. Exhibit P-4.A : Photocopy of Resident ID Card on behalf of Muzakir Sai Sohar (Regent of Muara Enim);

21. Exhibit P-4.B : Photocopy of Decree of the General Election Commission Number 51/Kpts/KPU-Kab-006.435441/ 2013, dated April 17, 2013 regarding Amendment to the Decision of the General Election Commission Number

42/Kpts/KPU-Kab-006.4355441/2013 regarding Determination of Candidate Pair of Regent and Deputy Regent Elected in the General Election of Regent and Deputy Regent of Muara Enim for the Period of 2013-2018;

22. Exhibit P-4.C : Photocopy of Decree of the Ministry of Home Affairs Number 131.16-2968 of 2013 dated May 30, 2013 regarding Ratification of Appointment of the Regent of Muara Enim, South Sumatra Province;

23. Exhibit P-5.A : Photocopy of Resident ID Card on behalf of Sahani Saleh (Regent of Belitung);

24. Exhibit P-5.B : Photocopy of Decree of the General Election Commission Number 60/Kpts/KPU-BEL-009.436452/X/2013 dated October 14, 2013 regarding Determination of Candidate Pair Elected in the General Election of Regent and Deputy Regent of Belitung in 2013;

25. Exhibit P-5.C : Photocopy of Excerpt of the Ministry of Home Affairs Decree Number 131.19-7270 of 2013 dated December 14, 2013 regarding Ratification of Appointment of the Regent of Belitung, Bangka Belitung Islands Province;

26. Exhibit : Photocopy of Resident ID Card on behalf of

P-6.A Al Haris (Regent of Merangin);

27. Exhibit P-6.B : Photocopy of Decree of the General Election Commission Number 42/Kpts/KPU-Kab/005.435300/ of 2013 dated March 31, 2013 regarding Determination of Selected Candidate Pairs of Participants of General Election of Regent and Deputy Regent of Merangin in 2013;

28. Exhibit P-6.C : Photocopy of Excerpt of the Ministry of Home Affairs Decree Number 131.15-4494 of 2013 dated June 3, 2013 regarding Ratification of Appointment of the Regent of Merangin, Jambi Province;

29. Exhibit P-7.A : Photocopy of Resident ID Card on behalf of Usman Ermulan (Regent of West Tanjung Jabung);

30. Exhibit P-7.B : Photocopy of Decree of the General Election Commission Number 32.B of 2010 dated October 25, 2010 regarding Determination and Announcement of Candidate Pair Elected in the General Election of Regional Head and Deputy Regional Head of West Tanjung Jabung Regency in 2010;

31. Exhibit : Photocopy of Decree of the Ministry of Home

P-7.C Affairs Number 131.15-1101 of 2010 dated December 29, 2010 regarding Ratification of Dismissal and Ratification of Appointment of the Regent of West Tanjung Jabung, Jambi Province;

32. Exhibit P-7.D : Photocopy of Minutes Number 170/804/DPRD/2015 dated December 16, 2015 regarding Plenary Meeting of the approval the Regional House of People's Representatives (DPRD) of West Tanjung Jabung Regency on Judicial Review of the Law Number 23 of 2014 regarding Regional Government to the Constitutional Court;

33. Exhibit P-7.E : Photocopy of Attendance List of Members of the Regional House of People's Representatives (DPRD) of West Tanjung Jabung Regency, dated December 16, 2015 regarding Request for the Approval the Regional House of People's Representatives (DPRD) on Legal Standing for the Application of Judicial Review of the Law Number 23 of 2014 regarding Regional Government;

34. Exhibit P-8.A : Photocopy of Resident ID Card on behalf of Tauhidi (Acting Regent of East Lampung);

35. Exhibit P-8.B : Photocopy of Decree of the Ministry of Home Affairs Number 131.18-4949 of 2015 dated August 27, 2015 regarding Appointment of the Acting Regent of East Lampung, Lampung Province;

36. Exhibit P-9.A : Photocopy of Resident ID Card on behalf of H. Bambang Kurniawan, S.T. (Regent of Tanggamus);

37. Exhibit P-9.B : Photocopy of Decree of the General Election Commission Number 794/KPU-Kab/008.435591/X/2012 dated October 4, 2012 regarding Determination of Candidates of Regent and Deputy Regent Elected in the General Election of Regent and Deputy Regent of Tanggamus in 2012;

38. Exhibit P-10.A : Photocopy of Resident ID Card on behalf of Hj. Iti Octavia Jayabaya, S.E., M.M. (Regent of Lebak);

39. Exhibit P-10.B : Photocopy of Decree of the General Election Commission Number 52/Kpts/KPU.Kab/015.436415/ XII/2013, dated December 21, 2013 regarding Determination of the Elected Candidate Pair of Regent and Deputy Regent of Lebak Regency for the

Period of 2013-2018 Based on the Results of the Re-vote in the Election of Regent and Deputy Regent of Lebak Regency in 2013;

40. Exhibit P-10.C : Photocopy of Decree of the Ministry of Home Affairs Number 131.36-225 of 2014, dated January 10, 2014, regarding Ratification of Appointment of the Regent of Lebak, Banten Province;

41. Exhibit P-11.A : Photocopy of Resident ID Card on behalf of Abubakar (Regent of West Bandung);

42. Exhibit P-11.B : Photocopy of Decree of the General Election Commission Number 38/Kpts/KPU-Kab.011.329865/ V/2013 dated May 24, 2013 regarding Determination of Elected Candidate Pair of Regent and Deputy Regent of West Bandung for the Period of 2013-2018;

43. Exhibit P-11.C : Photocopy of Decree of the Ministry of Home Affairs Number 131.32-4670 of 2013 dated July 9, 2013 regarding Ratification of Appointment of the Regent of West Bandung;

44. Exhibit P-12.A : Photocopy of Resident ID Card on behalf of H. Sutrisno, S.E., M.Si. (Regent of Majalengka);

45. Exhibit : Photocopy of Decree of the General Election

P-12.B Commission Number 60/Kpts/KPU-Kab.011.329129/ 2013, dated September 22, 2013 regarding Determination of Candidate Pair of Regent and Deputy Regent Elected in the Election of Regent and Deputy Regent of Majalengka in 2013;

46. Exhibit P-12.C : Photocopy of Decree of the Ministry of Home Affairs Number 131.32-7172 of 2013, dated December 3, 2013, regarding Ratification of Appointment of the Regent of Majalengka, West Java Province;

47. Exhibit P-13.A : Photocopy of Resident ID Card on behalf of H. Mohamad Muraz, S.H., M.M. (Mayor of Sukabumi);

48. Exhibit P-13.B : Photocopy of Decree of the General Election Commission Number 15/Kpts/KPU.Kosi-011.329150/ 2013 dated March 1, 2013 regarding Determination of Candidate Pair of Mayor and Deputy Mayor Elected in the Election of Mayor and Deputy Mayor of Sukabumi in 2013;

49. Exhibit P-13.C : Photocopy of Excerpt of the Ministry of Home Affairs Decree Number 131.32-2856 of 2013 dated April 25, 2013 regarding Ratification

of Appointment of the Mayor of Sukabumi, West Java Province;

50. Exhibit P-13.D : Photocopy of Resident ID Card on behalf of H. Mokh Muslikh (Chairman of the Regional House of People's Representatives (DPRD) of Sukabumi City);

51. Exhibit P-13.E : Photocopy of Resident ID Card on behalf of Tatan Kustandi (Deputy Chairman of the Regional House of People's Representatives (DPRD) of Sukabumi City);

52. Exhibit P-13.F : Photocopy of Resident ID Card on behalf of H. Kamal Suherman, S.H. (Deputy Chairman of the Regional House of People's Representatives (DPRD) of Sukabumi City);

53. Exhibit P-13.G : Photocopy of Decree of the Governor of West Java Number 170/Kep.1341-Pem.Um/2014 dated September 25, 2014, regarding Inauguration of Appointment of Chairman of the Regional House of People's Representatives (DPRD) of Sukabumi City for the Period of 2014-2019;

54. Exhibit P-14.A : Photocopy of Resident ID Card on behalf of Sutedjo Slamet Utomo (Regent of Banjarnegara);

55. Exhibit : Photocopy of Decree of the General Election

P-14.B Commission Number 41/Kpts/KPU-Kab-012.329402/2011 dated September 28, 2011 regarding Determination of Candidate Pair of Regent and Deputy Regent Elected in the General Election of Regent and Deputy Regent of Banjarnegara;

56. Exhibit P-14.C : Photocopy of Excerpt of the Ministry of Home Affairs Decree Number 131.33-693 of 2011 dated September 28, 2011 regarding Ratification of Dismissal and Ratification of Appointment of the Regent of Banjarnegara, Central Java Province;

57. Exhibit P-14.D : Photocopy of Minutes of the Regional House of People's Representatives (DPRD) of Banjarnegara Regency Number 170/55/ of 2015 dated November 30, 2015 regarding the Meeting of Chairman of the Regional House of People's Representatives (DPRD) of Banjarnegara Regency regarding Approval of Judicial Review of the Law Number 23 of 2014 regarding Regional Government to the Constitutional Court, along with attachment;

58. Exhibit P-14.E : Photocopy of Attachment of Attendance List of Meeting of Chairman of the Regional House

of People's Representatives (DPRD) of Banjarnegara Regency, dated November 30, 2015;

59. Exhibit P-14.F : Photocopy of Decree of the Regional House of People's Representatives (DPRD) of Banjarnegara Regency Number 170/35 of 2014 regarding Determination of Candidates for the Chairman of the Regional House of People's Representatives of Banjarnegara Regency for the Period of 2014-2019, dated September 9, 2014;

60. Exhibit P-15.A : Photocopy of Resident ID Card on behalf of Haryanto (Regent of Pati);

61. Exhibit P-15.B : Photocopy of Decree of the General Election Commission Number 15/Kpts/KPU-Kab.Pati-012.329311/2012 dated June 21, 2012 regarding Determination of the Elected Candidate of Re-voting in the Election of Regent and Deputy Regent of Pati;

62. Exhibit P-15.C : Photocopy of Decree of the Ministry of Home Affairs Number 131.33-514 of 2012 dated August 3, 2012 regarding Dismissal of the Acting Regent of Pati and Ratification of Appointment of the Regent of Pati, Central

Java Province;

63. Exhibit P-16.A : Photocopy of Resident ID Card on behalf of dr. Hasto Wardoyo, Sp.OG (K) (Regent of Kulon Progo);

64. Exhibit P-16.B : Photocopy of Decree of the General Election Commission Number 33/Kpts/KPU-Kab-013.329599/ P.KADA/VI/2011 dated June 22, 2011 regarding Determination of Candidate Pair Elected in the General Election of Regional Head and Deputy Regional Head of Kulon Progo Regency in 2011;

65. Exhibit P-16.C : Photocopy of Decree of the Ministry of Home Affairs Number 131.34-604 of 2011 dated August 12, 2011 regarding Ratification of Dismissal and Ratification of Appointment of the Regent of Kulon Progo, Yogyakarta Special Region Province;

66. Exhibit P-16.D : Photocopy of Decree of the Regional House of People's Representatives (DPRD) of Kulon Progo Regency, Yogyakarta Special Region Number 23 of 2015 regarding Approval of Request for Judicial Review of the Law Number 23 of 2014 regarding Regional Government, dated December 1, 2015;

67. Exhibit P-16.E : Photocopy of Minutes of the Plenary Meeting of the Chairman and Members of the Regional House of People's Representatives (DPRD) of Kulon Progo Regency Number 62/BA/DPRD/XII/2015 regarding Approval of Judicial Review of the Law Number 23 of 2014 regarding Regional Government to the Constitutional Court, dated December 1, 2015 (along with the attachment);

68. Exhibit P-17.A : Photocopy of Resident ID Card on behalf of Muhtarom (Regent of Madiun);

69. Exhibit P-17.B : Photocopy of Announcement of the Election Commission Number 517/KPU-Kab/ 014.329769/VI/2013 dated June 30, 2013 regarding Determination of Candidate Pair Elected in the General Election of Regent and Deputy Regent of Madiun in 2013;

70. Exhibit P-17.C : Photocopy of Decree of the Ministry of Home Affairs Number 131.35-4813 of 2013, dated July 30, 2013, regarding Ratification of Appointment of the Regent of Madiun, East Java Province;

71. Exhibit P-18.A : Photocopy of Resident ID Card on behalf of Ali Mustofa (Acting Regent of Trenggalek);

72. Exhibit P-18.B : Photocopy of Decree of the Governor of East Java Number 131.406/690/011/2015 dated October 2, 2015 regarding Appointment of the Regional Secretary of Trenggalek Regency as the Acting (PLH) Regent of Trenggalek;

73. Exhibit P-19.A : Photocopy of Resident ID Card on behalf of Dewa Gede Mahendra Putra, S.H., M.H. (Acting Regent of Bangli);

74. Exhibit P-19.B : Photocopy of Decree of the Ministry of Home Affairs Number 131.51-4641 of 2015 dated July 23, 2015 regarding Appointment of the Regent of Bangli, Bali Province;

75. Exhibit P-20.A : Photocopy of Resident ID Card on behalf of Ben Brahim S. Bahat (Regent of Kapuas);

76. Exhibit P-20.B : Photocopy of Decree of the General Election Commission Number 18/Kpts/KPU-Kab-020.435812/ 2013, dated April 1, 2013 regarding Determination of Candidate Pair Elected in the General Election of Regent and Deputy Regent of Kapuas Based on Decision of the Constitutional Court Number 94/PHPU.D-X/2012 dated March 26, 2013;

77. Exhibit P-20.C : Photocopy of Decree of the Ministry of Home Affairs Number 131.62-2801 of 2013, dated

April 19, 2013 regarding Ratification of Appointment of the Regent of Kapuas, Central Kalimantan Province;

78. Exhibit P-20.D : Photocopy of Minutes of the Plenary Meeting of Kapuas Regency Number 180/01/DPRD of 2016 regarding Approval of Judicial Review of the Law Number 23 of 2014 regarding Regional Government to the Constitutional Court, dated January 6, 2016;

79. Exhibit P-20.E : Photocopy of Attachment of Attendance List of Plenary Meeting of the Regional House of People's Representatives (DPRD) of Kapuas Regency;

80. Exhibit P-21.A : Photocopy of Resident ID Card on behalf of Syaiful Herman (Acting Regent of Bulungan);

81. Exhibit P-21.B : Photocopy of Excerpt of the Ministry of Home Affairs Decree Number 131.64-4996 dated August 28, 2015 regarding Appointment of the Acting Regent of Bulungan, North Kalimantan Province;

82. Exhibit P-22.A : Photocopy of Resident ID Card on behalf of Indra Yasin (Regent of North Gorontalo);

83. Exhibit P-22.B : Photocopy of Decree of the General Election Commission Number 40/Kpts/Pemilukada/KPU-

Kab-027.964859/ of 2013 dated September 30, 2013 regarding Determination of Elected Candidate Pair of Regional Head and Deputy Regional Head of North Gorontalo Regency for the Period of 2013-2018;

84. Exhibit P-22.C : Photocopy of Decree of the Ministry of Home Affairs Number 131.75-7152 of 2013 dated December 2, 2013 regarding Ratification of Appointment of the Regent of North Gorontalo, Gorontalo Province;

85. Exhibit P-23.A : Photocopy of Resident ID Card on behalf of Jamaluddin Malik (Regent of Sumbawa);

86. Exhibit P-23.B : Photocopy of Decree of the General Election Commission Number 48 of 2010, dated August 23, 2010 regarding Determination of Candidate Pair Elected in the General Election of Regent and Deputy Regent of Sumbawa in 2010;

87. Exhibit P-23.C : Photocopy of Decree of the Ministry of Home Affairs Number 131.52-1076 of 2010, dated December 23, 2010, regarding Dismissal of the Acting Regent of Sumbawa and Ratification of Appointment of the Regent of Sumbawa, West Nusa Tenggara Province;

88. Exhibit P-24.A : Photocopy of Excerpt of the Ministry of Home Affairs Decree Number 131.12-5235 of 2015 dated September 22, 2015 regarding Appointment of the Regent of Serdang Bedagai, North Sumatra Province;

89. Exhibit P-25.A : Photocopy of Resident ID Card on behalf of Marukan;

90. Exhibit P-25.B : Photocopy of Decree of the General Election Commission Number 07/Kpts/KPU.Kab-020.435874/ IV/2013 dated April 11, 2013 regarding Determination of the Voters at the General Election of Regional Head and Deputy Regional Head of Lamandau Regency in 2013;

91. Exhibit P-25.C : Photocopy of Decree of the Ministry of Home Affairs Number 131.62-4652 of 2013 dated July 4, 2013 regarding Ratification of Appointment of the Regent of Lamandau, Central Kalimantan Province;

92. Exhibit P-25.D : Photocopy of Minutes Number 170/172.1609/DPRD-LMD/XI, dated November 24, 2015 regarding Plenary Meeting of the Regional House of People's Representatives (DPRD) of Lamandau Regency regarding Approval of Judicial Review of the Law

Number 23 of 2014 regarding Regional Government to the Constitutional Court along with the attachment of the signature;

93. Exhibit P-25.E : Photocopy of Attendance List of the Members of the Regional House of People's Representatives (DPRD) of Lamandau Regency on November 24, 2015 regarding Approval of the Regional House of People's Representatives (DPRD) on Legal Standing for the Petition of Judicial Review of the Law Number 23 of 2014 regarding Regional Government;

94. Exhibit P-26.A : Photocopy of Resident ID Card on behalf of Ir. H. Aswadin Randalembah, M.Si;

95. Exhibit P-26.B : Photocopy of Decree of the General Election Commission of Donggala Regency Number 278/204/KPU-KWK/2010/2010, dated September 22, 2010 regarding "Determination of Elected Candidate Pair of Regional Head and Deputy Regional Head of Sigi Regency in 2010;

96. Exhibit P-26.C : Photocopy of Decree of the Ministry of Home Affairs Number 131.72-943 of 2010 dated November 18, 2010 regarding "Dismissal of the Acting Regent of Sigi and Ratification

of Appointment of the Regent of Sigi, Central Sulawesi Province;

97. Exhibit P-27.A : Photocopy of Decree of the General Election Commission of Cilacap Regency Number 27/Kpts/KPU-Kab-012.329382/ 2012, dated September 15, 2012 regarding Candidate Pair Elected in the General Election of Regent and Deputy Regent of Cilacap in 2012;

98. Exhibit P-27.B : Photocopy of Excerpt of the Ministry of Home Affairs Decree Number 131.33 – 782 of 2012 dated November 12, 2012 regarding Ratification of Appointment of the Regent of Cilacap, Central Java Province;

99. Exhibit P-27.C : Photocopy of Resident ID Card on behalf of H. Tatto Suwarto Pamuji (Regent of Cilacap);

100 Exhibit P-28 : Photocopy of Law Number 23 of 2014 regarding Regional Government;

101 Exhibit P-29.A : Photocopy of Resident ID Card on behalf of Kherlani, S.E., M.M. (Regent of South Lampung);

102 Exhibit P-29.B : Photocopy of Decree of the Ministry of Home Affairs Number 131.18-4715 of 2015 dated August 3, 2015 regarding Appointment of the Acting Regent of South Lampung;

103 Exhibit P-30.A : Photocopy of Resident ID Card on behalf of H. Ahmad Safei (Regent of Kolaka);

104 Exhibit P-30.B : Photocopy of Decree of the General Election Commission of Kolaka Regency Number 63/Kpts/KPU.Kab-027.4333557/ of 2013, dated October 26, 2013 regarding "Determination of the Elected Candidate Pair of Regent and Deputy Regent of Kolaka for the Period of 2014 - 2019 in the General Election of Regent and Deputy Regent of Kolaka in 2013";

105 Exhibit P-30.C : Photocopy of Excerpt of the Ministry of Home Affairs Decree Number 131.74 – 8064 of 2013 dated December 31, 2013 regarding "Ratification of Appointment of the Regent of Kolaka, Southeast Sulawesi Province";

106 Exhibit P-30.D : Photocopy of Minutes of the Regional House of People's Representatives (DPRD) of Kolaka Regency Number 170/739/2015 dated December 1, 2015 regarding Plenary Meeting on Approval of Judicial Review of the Law Number 23 of 2014 regarding Regional Government to the Constitutional Court, along with attachment;

107 Exhibit : Photocopy of Resident ID Card on behalf of

P-31.A Ahmed Zaki Iskandar Z (Regent of Tangerang);

108 Exhibit P-31.B : Photocopy of Decree of the General Election Commission of Tangerang Regency Number 008/Kpts/KPU-Kab.Tng/ 015436389/XII/2012 dated December 14, 2012 regarding "Determination of the Elected Candidate Pair of Regent and Deputy Regent of Tangerang for the Period of 2013-2018";

109 Exhibit P-31.C : Photocopy of Decree of the Ministry of Home Affairs of the Republic of Indonesia Number 131.36 - 218 of 2013 dated February 20, 2013 regarding "Approval and Appointment of the Regent of Tangerang, Banten Province";

110 Exhibit P-32.A : Photocopy of Resident ID Card on behalf of Sokhi Atulo Laoli (Regent of Nias);

111 Exhibit P-32.B : Photocopy of Decree of the General Election Commission of Nias Regency Number 13/Kpts/KPU-Kab-002.434713/ 2011, dated April 9, 2011 regarding "Determination of the Selected Candidates of Regent and Deputy Regent of Nias for the Period of 2011-2016 in the General Election of Regional Head and Deputy Regional Head of Nias Regency in 2011";

112 Exhibit P-32.C : Photocopy of Excerpt of the Ministry of Home Affairs Decree Number 131.12 – 400 of 2011 dated May 30, 2011 regarding "Ratification of Appointment of the Regent of Nias";

113 Exhibit P-33.A : Photocopy of Decree of the Ministry of Home Affairs Number 131.7 – 6662 of 2013 dated September 16, 2013 regarding "Ratification of Appointment of the Regent of Southeast Minahasa, North Sulawesi Province";

114 Exhibit P-34.A : Photocopy of Resident ID Card on behalf of Cek Endra (Regent of Sarolangun);

115 Exhibit P-34.B : Photocopy of Decree of the General Election Commission of Sarolangun Regency Number 15 of 2011, dated May 3, 2011 regarding "Determination and Announcement of Elected Candidates for Voting Results and Vote Counting of the General Election of Regional Head and Deputy Regional Head of Sarolangun in 2011";

116 Exhibit P-34.C : Photocopy of Decree of the Ministry of Home Affairs Number 131.15 – 539 of 2011 dated July 13, 2011 regarding "Ratification of Appointment of the Regent of Sarolangun, Jambi Province";

117 Exhibit P-35.A : Photocopy of Resident ID Card on behalf of H. Moch Ali Bin Dachlan, SH., MM (Regent of East Lombok);

118 Exhibit P-35.B : Photocopy of Decree of the General Election Commission of East Lombok Regency Number 1.PB/KPTS/KPU-Lotin/V/2013, dated May 20, 2013 regarding Determination of the Vote Count Recapitulation Results of the General Election of Regent and Deputy Regent of East Lombok;

119 Exhibit P-35.C : Photocopy of Excerpt of the Ministry of Home Affairs Decree Number 131.52-6355 of 2013, dated August 20, 2013 regarding Ratification of Appointment of the Regent of East Lombok, West Nusa Tenggara Province.

Whereas in addition to submitting letter/written evidence as mentioned above, to substantiate their postulate, the Petitioners at the hearing on April 14, 2016 and/or April 28, 2016 have proposed 3 (three) experts, namely **Prof. Dr. M. Ryass Rasyid, MA, Dr. Indra Perwira, S.H., M.H., Dr. M. Rifqinizamy Karsayuda, S.H.,LL.M,** and **Prof. Dr. Ir. H. Abrar Saleng, S.H., M.H,** who rendered their testimony under oath in the trial and/or have conveyed the testimony in writing stating cases that are essentially as follows::

1. Prof. Dr. M. Ryass Rasyid, MA

I follow "from afar" the development of the discussion process of the Constitution Draft in the People's Representative Council (DPR) until the ratification of the Draft Constitution into the Law which was then given number 23 of 2014. I said from afar, because even though during the process took place, my position as a member of the Presidential Advisory Council for Government and Bureaucracy Reform should be ordered by the President or at least requested by the Ministry of Home Affairs to get involved in the formulation of the Constitution Draft or at least participate in the discussion process in the commission II of the People's Representative Council of Indonesia (DPR-RI) as part of the government team, but in reality this does not happen. As a former Director General of General Government and Regional Autonomy, the Ministry of Home Affairs (1998-1999), Chairman of the Political and Government Reform Team, which among others gave birth to the Law Number 22 of 1999 (1998-2000) which became the basis for the beginning of the regional autonomy era resulting from reform, the ministry of regional autonomy at the first and last (1999-2000), a former member of the commission II of the People's Representative Council of Indonesia (DPR-RI) (2004-2009), and a member of the Presidential Advisory

Council for government and bureaucratic reform (2010-2014), I was not invited to strengthen the government team in the formulation process and discussion of the Draft Constitution of Local Government, replacing the Law Number 32 of 2004.

I feel it is necessary to convey previously my position during the process of the formulation of the Draft Constitution and its discussion in the People's Representative Council (DPR) as a starting point for the views that I will convey before this noble court session. I consider that the material substance contained in the Law Number 23 of 2014 relating to the withdrawal of authority from the Regency/City to the Province contains at least 4 fatal mistakes, namely (1) departing from false assumption about central government power, (2) violating ethics government, (3) violating the spirit of regional autonomy, and (4) creating uncertainty in public services at the regency/city level.

Let me briefly explain these 4 mistakes. FIRST, the central government assumes that all government power comes from the central government which is claimed to be the sole representation of the state and therefore it is only natural that the central government delegates authority to the region, or withdraws it, in accordance with the defined "state interests" unilaterally is something that

is wrong, a historical, and illustrates the arrogance of excessive power. Mistaken, because the state includes all components of power that work both at the center and in the region as an organizational system whose policies aim at realizing people's welfare. Local government is part of the national government which shall work in harmony with the central government to achieve the country's goals. Whereas there is division of power or authority between the center and the regions does not mean that the central government can monopolistically regulate the distribution of power. The source of power is not solely from the central government. Historically, hundreds of years before the Republic of Indonesia was formed on August 18, 1945, in this land there were local powers as "*political entities*" who spread and exercised power in their respective territories. The arrival of invaders and imperial powers that had been embedded for hundreds of years still acknowledged the existence of local power with domestic authority, especially with regard to land, attached to it. The independence of this country is the result of the struggle and sacrifice of all people of Indonesia, including those in what we now call regions. The formation of the state on August 18, 1945 was the culmination of a universal struggle which had brought so many lives, treasures and tears, spilling the blood of

this nation everywhere. The Preparatory Committee for the Indonesian Independence Efforts and the national committees formed thereafter were also not devoid of the presence and contribution of those who were representatives of regions throughout the former Dutch colony. The founding fathers of the country came from various regions. That is why all the constitutions that have been in force in Indonesia, especially the 1945 Constitution, recognize the existence of these regions with authorities that have historically been inherent in their existence, both large and small regions, even special regions. In short, the formation of this country was the result of a compromise which later became a national agreement. That we have known as regional and regional government, although administratively formed by the central government, was not “conquered territory” and did not arise from nothing. They existed before the Republic of Indonesia was born. Their voices in discussing the benefits of governance should not be ruled out on the grounds that the central government is the owner of power and power in the region solely because of “granting” of the center. This erroneous assumption has been refuted and corrected by the team that I chaired in 1998-99 by changing the basic assumption of the center and regional power. As head of the government team that came forward to

the Peeple’s Representative Council (DPR) brought the Draft Contitution of Local Government to replace the Local Government Law Number 5 of 1974, at that time I explained that basically the power of government came from the people. Therefore the root of power is in the areas where the people reside. The power of the central government is that is formulated in the Constitution and the Law which elucidate the intent of the Constitution. This assumption further emphasizes that all areas of power that are not under the authority of the central government as stipulated in the Constitution and its derivative laws, are automatically the authority of regional government: provinces and regencies/cities. Therefore, the Law Number 22 of 1999 does not recognize the term granting or delegating authority from the center to the regions, but the “recognition” of authority by the central government. In the Government Regulation (PP) Number 25 of 2000 which elucidates the relationship of authority further formulated what are the central authorities that apply in regions outside the absolute authority formulated in the Law Number 22 of 1999 (defense and security, foreign, monetary, judicial, and religion). This situation then changed after the issuance of Regional Government Law Number 32 of 2004 which overturned all previous assumptions. The Lawmakers Number 32 of 2004 reclaimed the

assumptions used by the Lawmakers Number 5 of 1974 who believed that the source of power was the central government. In the Law Number 32 of 2004 the term recognition of authority is no longer known but "assignment of affairs." Here is the beginning of the revival of the old assumption. In terms of affairs, this Law assumes that all government authority basically belongs to the central government, in this case the president as the head of state. That is submitted to the regions is only a part of the technical authority, which is called affairs. The Law Number 23 of 2014 continues the entry into force of this assumption.

This assumption starts from the philosophy of power in the old Javanese culture which believes that basically the power shall gather in one hand, it cannot be divided. But the old concept of power refers to the royal system in which the king is the sole owner of all power. That philosophy does not actually apply in the context of the formation of the Republic of Indonesia, and even more irrelevant is applied in the democratic system that we profess. The decision of the central government to revert to old historical assumption which has proven to have given birth to a centralized government system (Law Number 5 of 1974) is questionable because it was born in the era of decentralization. The Law Number 32 of 2004 and the Law

Number 23 of 2014 are a very real stretch of the decentralized road map. The Lawmakers seem to have forgotten that the centralization system that lasted for 25 years the enactment of the regime of the Law Number 5 of 1974 has stunted the initiative and creativity of local government and communities in the region, weakened the responsibility of the region in developing regions and communities, and lowered the dignity of local communities as a result limited or lack of dignified participation space for them in determining their future. All depend on the attention and "grace" of the central government. The local officials have an inferiority mentality, begging for help to the center and serving central officials who visit the area. This situation was corrected by the Law Number 22 of 1999. Placement of authority is quite extensive to the regions, especially regencies/cities, and the allocation of financial resources is relatively large compared to before the enactment of this Law, has gradually changed the face of the region and aroused the power of initiative, creativity, and their self-esteem. In the context of government it is understood that no initiative and creativity can be expected without sufficient authority and money. Strangely, the revival of the initiative, creativity and self-esteem of the region was not accepted as a prospective development for the

development of healthy competition between regions towards the development of the nation, but instead was suspected by a number of key officials in the government in Jakarta as if the autonomy was a threat to the integrity of the Unitary State of the Republic of Indonesia. Various accusations were built, as if regional autonomy had gone too far, reinforced ethnicism, and later autonomy was blamed as the cause of corruption in the region. There may be factual truths that underlie these accusations on a case-by-case basis. But making regional autonomy, especially in regencies/cities, as the main cause of these problems is a mistake. If in the implementation of authority there is an error (mistake) then it also shows the failure of the implementation of the tasks of the central government in conducting supervision, monitoring, evaluation, and correction. If it is considered the practice of ethnocentrism, what is the size? Is not the rise of regional self-esteem that has been neglected, which has been manifested through the presence of "native son" in the governance structure, which is normal after 25 years of participation being limited to the name of the national interest? If a matter of corruption, it is important to realize that widespread corruption in the regions occurred after the implementation of the direct election system for regional head that began in 2005. That

is not part of the 1999 government reform package.

SECOND, violations of government ethics occur in the entire process of making the Draft Constitution and the enactment of the Law Number 23 of 2014. The central government never gave a comprehensive explanation of the reasons for withdrawing authority from the regency/city. It should be noted that the birth of this Draft Constitution did not go through a review process, was never consulted with the regency/city government which would instead be affected by its implementation, and was never disseminated to the public before being discussed in the People's Representative Council (DPR). So do not be surprised if after being published and only known by the regency/city government, they were shocked. As if one morning they woke up from sleep all of a sudden the authority they had been carrying away vanished for no reason. Ethically, the true intention of the central government to change the position of authority begins with a review of the implementation of each of these authorities, has there been a mistake that has wide impact? Where did the error occur? What caused it? From there, conclusion and solution can be made. Does it need to be corrected in a specific policy or is it necessary to shift authority through the law. Whatever solution will be decided shall be supported by a series of results of

review on its impact on the administration of government and public services in the regions. The next step is to consult the results of the review and plan for the solution with all local government stake holders. At the consultation forum, the regency/city government could be given an understanding of the intention of the central government to change the position of the authority while receiving input from the regency/city government in response to the planned change. Thus there is a conditioning process that can smooth the implementation of the Law that will be born. This consultation forum also shows the appreciation of the central government towards the regional government. Isn't this government an organizational unit that should go hand in hand, respect each other, support each other and strengthen one another? What is preventing the central government from having a great soul sitting together with the regency/city government, also with the governors, formulating a solution for each problem faced? If the open mind and great soul of the government leaders become the basis of consultation between them, then the potential for conflict between them will definitely be eliminated.

THIRD, the withdrawal of authority without objective reasons from the regency/city is a policy that violates the principle of regional autonomy in the reformation of

1998. That principle is mutual trust in central-regional relations. Withdrawal of authority from the regency/city without a clear reason from the center (through law) is a symbol of distrust of the center towards the region. It is necessary to refresh our memory that the consensus on regional autonomy in 1998 which was later incorporated into the Law Number 22 of 1999 was to place the emphasis of autonomy on regencie/cities. The principle of the broadest autonomy is realized through granting "full autonomy" to regencies/cities. That is why when the Law was implemented in 2001, all central agencies in the regency/city, except the agency that manages 5 government fields which are the absolute authority of the central government, were liquidated. This means that the regency/city government has the authority to carry out government, development and community services in various fields, except for those fields which according to the Constitution and the Law become the domain of authority of the central government and the provincial government. This spirit is no longer maintained by the Lawmakers Number 23 of 2014. With this Law, the authority of regency/city government is increasingly narrowing, so that their initiative and creativity will automatically decrease. The question then tickles our minds, where is the direction of this autonomy journey going? How can the administration of

government and public services be maximized if there is an unrelenting tug of authority within the government itself?

FOURTH, the enactment of the Law Number 23 of 2014 has immediately created uncertainty in several fields of public service whose authority was withdrawn from the regency/city. All of a sudden the entire licensing process in the sector of mining, forestry and marine that had been managed by the regency/city government had to be stopped. Suddenly, guiding of high schools and vocational schools with their teachers and supervision of the workforce regardless of the regency/city government.

I received a lot of input that a number of provinces were overwhelmed by how to manage the addition of thousands of personnel from the abolished offices in all regencies/cities in the province. How to provide office space to accommodate those who shall enter the provincial office complete with the transfer of all available archives and documents, how to provide a budget for their allowances which has been borne by the Regional Government Budget (APBD) of regency/city, how to continue high school and vocational school programs that are free all this time it has become a burden on the Regional Government Budget (APBD) of regency/city, how to serve application for business licenses, guidance, and supervision of all mining, marine, forestry operations in all provinces. In

the regency/city there is confusion about what they have to do in the transition phase. Until now, approaching 2 years of the enactment of the Law Number 23 of 2014, there has not been a single Government Regulation that can be used as a reference for its implementation. There is a vacuum and a long stagnation. Implementation in the future is also not guaranteed to take place smoothly. There will be fatigue and complaints from the public who have been dealing with the district government in these service sectors, because they have to go a long way to the province. The spirit of autonomy put in the regency/city to bring services closer to the people in need, has naturally disappeared.

Starting from the description and argument that I briefly presented above, I came to the simple conclusion that the Law Number 23 of 2014 as long as it involves withdrawing authority from the regency/city is a wrong step. This law does not solve problems that so far may have existed in the regions, but instead creates new problems. My description which completely departs from the point of view of the government certainly cannot prove the existence of contradiction or violation of the "Written Constitution" as will be conveyed later by experts who are from a background in jurisprudence. But if we agree that the constitution is not limited to what is written, and

its meaning can be seen from a broader spectrum, which moves “beyond the written constitution,” then the negative side that I see is inherent in the birth process and the substance of this Law, presumably has carried a heavy burden in efforts to build good governance.

2. Dr. Indra Perwira, S.H., M.H.

When the petitioners through their Attoreneys requested my willingness as an expert in the Judicial Review of Law Number 23 of 2014 regarding Regional Government, I was surprised because so many Articles in the Law were questioned. This fact forces me to deepen the Law not only to what is written, but rather to what is implied. Namely the rationale and legal politics that underlie it.

The rationale is explained quite long in the Elucidation of the General section, and a little in the section Considering of the Law Number 23 of 2014. Next, I quote a general Elucidation which is also written with a sound that is almost the same in the section Considering the letter b. “Providing the broadest autonomy to the Region is directed to accelerate the realization of people’s welfare through improved services, empowerment, and community participation. In addition, through broad autonomy, in the strategic environment of globalization, the Regions are expected to be able to increase their

competitiveness by considering to the principles of democracy, equity, justice, privileges and specificities as well as the potential and diversity of the Regions in the system of the Unitary State of the Republic of Indonesia."

In my opinion there is nothing wrong with quotation that illustrates the purpose of regional autonomy. Article 1 paragraph (1) of the 1945 Constitution confirms that the State of Indonesia is the Unitary State in the form of Republic. The 1945 Constitution even locks in Article 37 paragraph (5) that changes to the form of a unitary state cannot be changed. So there is no more bargaining about the form of the state, in political media we often hear the slogan "*NKRI Harga Mati* (the Unitary State of the Republic of Indonesia is Undisputed)".

Next General elucidation states: "In a unitary state, sovereignty is only in the state government or national government and there is no sovereignty in the regions. Therefore, no matter how much autonomy is given to the Region, the final responsibility for the administration of the Regional Government will remain in the hands of the Central Government. For this reason, the Regional Government in a unitary state is a unity with the National Government. In line with that, the policies made and

implemented by the regions are an integral part of national policies.

In this section, the rationale of the legislators began to appear. Who is meant by the National Government? In line with Article 4 paragraph (1) of the 1945 Constitution, the National Government is the President. In this case, the General Elucidation reads: “The president as the holder of government power is assisted by the minister of state and each minister is responsible for certain Government Affairs in the government. Some Government Affairs which are the responsibility of the minister are actually autonomous to the Regions. .. ” In another paragraph: The President as the final person in charge of the administration as a whole delegates its authority to the governor to act on behalf of the Central Government to provide guidance and supervision to regency/city regions.

So in the Unitary State of the Republic of Indonesia there is only one government that is the national government held by the President and regional autonomy is part of the administration of government by the President. As a consequence, the administration of regional government shall be within the control of the President. The range of government constraints starts from the President, Ministers, Governors, Regents/Mayors until

ending in the Sub-district Head, in a frame referred to as general government affairs.

From the perspective of the Law itself as a whole idea, which is more viscous in reference to Article 1 and Article 4 of the 1945 Constitution, I have come to the conclusion that the articles in question by the petitioners have no problem, because the articles are a the logical consequences of the intentions of the legislators. Even if the legislators are consistent with this rationale, then it should be or more appropriate if the filling of the position of Regional Head is chosen by the Regional House of People's Representatives (DPRD) (Law Number 22 of 2014). There is no interest in involving the people's sovereignty and public accountability in the regions, because the regional government is basically a part of the President's power. In line with that, the position, roles, rights and obligations of the Regional House of People's Representatives (DPRD) are also more emphasized on the elements of regional government administrator, such as the following Elucidation: "As a consequence of the position of the Regional House of People's Representatives (DPRD) as an element of Regional Government administrator, then the composition, position, role, rights, obligations, duties, authority, and functions of the Regional House of People's

Representatives (DPRD) are not regulated in several laws but are sufficiently regulated in this Law as a whole in order to facilitate its regulation in an integrated manner."

In line with this rationale, it is not surprising that the Law Number 23 of 2014 has reappointed the principle of deconcentration as the basis for delegating authority from the President to the Ministers, Governors, and Regents/Mayors. Although in Chapter I General Provisions number 9 Deconcentration is not mentioned a principle, but in several articles it is referred to as a principle. For example, Article 5 paragraph (4) is as follows: "The Administration of Government Affairs as referred to in paragraph (2) in the Region is carried out based on the principles of Decentralization, Deconcentration, and Co-administration Task."

As it is known, Article 18 of the 1945 Constitution does not recognize the principle of Deconcentration. Article 18 paragraph (2) of the 1945 Constitution reads: "The provincial, regency, and city governments regulate and manage their own government affairs according to the principle of autonomy and co-administration task." Article 18 paragraph (2) which is the result of the Second Amendment to the 1945 Constitution, actually is a reaction and correction to the legal politics of regional

government during the New Order, which is based on the Law Number 5 of 1974 regarding Regional Government. From what I studied about the Law Number 23 of 2014, I strongly suspect that the Law adopted the ideas and rationale of the Law Number 5 of 1974.

Actually there are two options for a country in the form of unity in the administration of government, namely centralistic or desentalistic. In practice both options are valid with all the advantages and disadvantages. Centralism is usually carried out in countries with small territories, homogeneous populations, and monarchical governments. For example, in France, Netherlands, Sweden. Meanwhile, large countries with heterogeneous populations such as Indonesia are more suitable to use desentalistic. Perhaps that is what the founding fathers thought, so that Article 18 of the 1945 Constitution was available. If we examine the Minutes of the Meeting to establish the 1945 Constitution, the choice of the form of the Unitary State was not immediately agreed upon without debate. Bung Hatta actually conveyed the form of the United State. The agreement was reached with the choice of the form of the Unitary State with decentralization. So understanding Article 1 of the 1945 Constitution cannot stand alone, but must always be related to Article 18. Only one thing is forbidden in the Unitary State of the Republic of

Indonesia, namely regions that are also *staat* (state) (See Elucidation of Article 18 of the 1945 Constitution before Amendment).

Let me slightly raise the Law Number 5 of 1974 which I suspect inspires the Law Number 23 of 2014. The law expressly adheres to the concept of real autonomy or in the language of the law is called "real and responsible regional autonomy" (See Article 4 of the Law Number 5 of 1974 regarding the Principles of Regional Government). In line with this concept, each autonomous region is given basic affair, namely some government affairs which become regional household affairs. Furthermore, the addition and subtraction of government affairs is given based on the reality of regional capability. In addition to regulating and managing their household affairs based on the principle of decentralization, the regional government also carries out central government affairs based on the principle of co-administration task/*Medebewind* (See Article 1 letter of Law Number 5 of 1974 regarding the Principles of Regional Government). The concept of co-administration task is the first step towards decentralization. If the region turns out to be capable of carrying out co-administration task, it is not impossible that these matters will be turned into household affairs.

One interesting thing from the Law Number 5 of 1974 is the principle of deconcentration, in addition to decentralization and co-administration task. The unitary state has only one authority, namely the President as the head of government. The President can delegate governmental authority to government officials in certain regions, and each region is chaired by a regional head who is responsible in stages to the President. In the New Order practice, the Law Number 5 of 1974, instead of empowering the Regions, has actually created regional dependence on the Central Government and made the Regional Government merely the executor of Central policies. The autonomous region is at the same time an administrative region, and the regional head is also the regional head. Autonomy does not materialize, because the principle of deconcentration is more prioritized than decentralization. The regional head, starting from Sub-district Head (Camat), Regent/Mayor and Governor are basically the central apparatus. “Fat and wet” government affairs tend to be taken by the Center while “thin and dry” government affairs are left to the regions. Licensing authority accumulates on the central government, so that the management of government at that time is like a broom stick, all things go to the central government. Bureaucracy is slow and arrogant, especially in public

services. Therefore, after the Reformation, in line with the spirit of democratization and decentralization that was proclaimed, then things that are centralistic we consciously left behind.

In the 1945 Constitution (the Second Amendment), the principle of deconcentration in the administration of regional government is no longer known. The real and responsible teaching of regional households was changed to the broadest autonomy, with the intention of this unitary state to be supported by strong autonomous regions.

Article 18A of the 1945 Constitution illustrates the existence of four patterns of relations between the center and the regions, namely the relationship of authority, financial relation, relations of public services, and relations of natural resources and other resources. As a unitary state, of course the whole pattern of relations creates administrative and territorial relations between government structures. Administrative relation means that the implementation of regional government policy is a unity in the administration of the state administration system. Territorial relation implies that the regional region is a unified state territory. However, decentralization in a unitary state does not only mean administrative dispersal of authority from one to other state administration body (*ambtelijke*

decentralisatie/deconsentratie), but also implies the distribution of power vertically (*regelende en besturende bevoegheid*) to autonomous regions. Decentralization in the second meaning is also divided into two namely, territorial decentralization (*territoriale decentralisatie*) and functional decentralization (*functionele decentralisatie*). Territorial decentralization includes autonomy (*autonomie)* and *medebewind* or *zelfbestuur* (co-administration task).

The Unitary State of the Republic of Indonesia (NKRI), with the slogan "*Bhinnneka Tunggal Ika* (Unity in Diversity)" in the symbol of the State of Garuda Pancasila, is a portrait of Indonesia as a true national state. Prof. Sudiman gives the meaning of the motto in the understanding of nationality as "unity in difference and difference in unity". This implies that each region or region has different characteristics in terms of ethnicity, culture, religion, economic potential and so on, but is an integral part of the Republic of Indonesia, so that it has the same right to obtain or create development progress and prosperity of the people. Therefore in a unitary state there are two important general legal principles, namely "cohesiveness" and "subsidiarity".

The principle of cohesiveness views the region as a subsystem of the country's territory which, if not properly managed and managed, will affect on other regional subsystem, which in turn affects the state system. The principle of "subsidiarity" is the granting of trust and authority to the lower government sub-unit through a democratic decentralized system.

Regarding the decentralization system, the 1945 Constitution has provided a constitutional basis for Article 18, Article 18A and Article 18B. These articles contain the following principles:

a. the principle of the recognition and respect of the state for the customary law community units and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia;
b. the principle of Regional regulates and manages themselves the government affairs according to the principle of autonomy and co-administration task;
c. the principle of carrying out the broadest autonomy;
d. the principle of recognizing and respecting special and particular regional government;
e. the principle of representative body directly elected in an election;

f. the principle of central and regional relations shall be implemented in a harmonious and fair manner;
g. the principle of authority relation between the central government and regional government shall consider to the specificity and diversity of the regions;
h. the principle of financial relation, public services, utilization of natural resources and other resources between the central government and regional governments carried out fairly and harmony in accordance with the law; and
i. the principle of state recognition and respect for local government units that are special or particular in nature;

These principles should be strengthened and reinforced in the context of amending the Law Number 32 of 2004 regarding Regional Government, but the Law Number 23 of 2014 which replaced it, instead raised and revived the ideas contained in the Law Number 5 of 1974, especially the principle of deconcentration.

Apart from criticism of the Law Number 5 of 1974, the principle of deconcentration at that time had a clear constitutional basis, namely in the Elucidation of Article 18 of the 1945 Constitution, which was an inseparable part of the Preamble and the Torso of the 1945 Constitution. The Elucidation stated, "in regions that are autonomous

(*streek* and *locale rechtsgemenschappen*) or are merely administrative regions, all according to the rules to be determined by law".

If we look closely, there is a fundamental shift between what is affirmed in the 1945 Constitution and the Law Number 23 of 2014. Article 18 paragraph (2) of the 1945 Constitution is reaffirmed in the Law Number 32 of 2004, namely Article 10 paragraph (2) :

"In carrying out governmental affairs which are under regional authority as referred to in paragraph (1), the regional government exercises the broadest autonomy to regulate and manage its own government affairs based on the principle of autonomy and co-administration task."

In the above provisions that are the subject of law are the Regional Government that exercises the broadest autonomy based on the principle of autonomy and co-administration task. Meanwhile, in the Law Number 23 of 2014, which was stipulated by the President SBY 20 (twenty) days before the end of his term, the legal subject was transferred to the Government (President). We found it in the provisions of Article 5 as follows:

(1) The President of the Republic of Indonesia holds governmental authority in accordance with the 1945 Constitution of the Republic of Indonesia.

(2) The Governmental Power as referred to in paragraph (1) is described in various Government Affairs.

(3) In organizing Government Affairs as referred to in paragraph (2), the President shall be assisted by the minister who administers certain Government Affairs.

(4) The administration of Government Affairs as referred to in paragraph (2) ***in the Region*** *is carried out based on the principles of Decentralization, Deconcentration, and Co-Administration Task.*

The article clearly adopts the basic principles contained in the Law Number 5 of 1974, entitled "Law on Governance in Regions". The title implies that the Law regulates the power of the President as the administer of government in the region, and not regulating regional government. If you see the compatibility between the title and its contents, then the Law Number 5 of 1974 is far firmer than the Law Number 23 of 2014.

In line with order of the 1945 constitutional, what should be regulated in the law is the implementation of government by the **regional government**, not **the government in the region**. Article 18 paragraph (7) confirms that the *composition and procedures for* ***the administration of regional government*** *are regulated in law*.

With this shift in thinking, it is natural that governors, regents/mayors and sub-district heads are given

the authority to administer general government affairs which are directly under the control of the central government. Although the Consideration considers that the letter a has included this Article as the reason for the replacement of the Law Number 32 of 2004, but the decentralization policy is directed at the consideration of the letter c, which requires "a unified system of state government administration".

Similarly, the articles, there are many fundamental changes. For example, Article 308 to Article 315 regarding the Regional Government Budget (APBD). The Regional House of People's Representatives (DPRD) can no longer reject the Regional Budget Revenue and Expenditure Design (RAPBD) from the regional government, with the consequence that the regional government runs the Regional Government Budget (APBD) ceiling the following year. If the Regional House of People's Representatives (DPRD) refuses, then they are threatened with sanctions of losing allowance for 6 (six) months. Even though the Regional House of People's Representatives (DPRD) accepts, but beyond the predetermined discussion period, together with the regional head is threatened with revocation of allowance for 6 (six) months. Thus, both the regional head and the Regional House of People's Representatives (DPRD) are treated no more than the central apparatus in the area.

There may be rational reasons from the Government and the People's Representative Counsil (DPR) to replace the Law 32 of 2004 with the Law Number 23 of 2014, it's just that I haven't found it yet. At the National Symposium: "Legal Politics of Regional Government After the Establishment of the Law Number 23 of 2014: Decentralization or Re-Centralization?" Which was held in Bandung on June 8, 2015. The panelists involved in the formulation of the Law were able to convey one of the reasons, that the fact shows that the implementation of regional government by the Law Number 32 of 2014 has caused many regional heads to get involved with legal issue and money politic. In my opinion the problem is more due to the recruitment system factor in filling the position of regional head, not the government system.

Based on the explanation above, the rationale or idea that underlies the regional autonomy policy in the Law Number 23 of 2014 in my opinion is not in line with Article 18, Article 18A and Article 18B of the 1945 Constitution. Even if there is a constitutional basis, the idea of the dispersal of affairs refers more to Article 4 of the 1945 Constitution. Whereas the *President of the Republic of Indonesia holds governmental authority according to the Constitution* in the Law Number 23 of 2014, which is interpreted as an instrument of re-

centralization. In order to put the proper basis for regional autonomy policy from the 1945 Constitution, Article 4 should be interpreted as the responsibility of the President to guarantee the implementation of Article 18A and 18B, because that is among the constitutional duties.

However, if the legal political choice requires Article 4 as a reason for centralization as an option in a unitary state, then it is not entirely wrong. As long as Article 18, Article 18A and Article 18B are first removed from the 1945 Constitution.

3. Dr. M. Rifqinizamy Karsayuda, S.H.,LL.M

In this expert testimony, the expert wants to put forward three main things related to the petition for judicial review of the Law Number 23 of 2014 as requested by the petitioners. *First*: the existence of provisions concerning the division of governmental affairs between the central, provincial and regency/city in the Law as such (*a quo*) which violates the principle of the broadest autonomy as mandated by our Constitution. *Second*: Withdrawal of regency/city authority in the Law Number 23 of 2014 has implication for the eradication of the constitutional rights of citizens as guaranteed in the 1945 Constitution, and *third*: cancellation of regional regulation, without giving space for legal remedies

through judicial institution as regulated in the Law as such (*a quo*) has the potential to violate the principles of the rule of law as affirmed in our constitution.

The provisions of Article 18 paragraph (2) of the 1945 Constitution affirm "Provincial, regency, and city government regulate and manage their own government affairs according to the principle of autonomy and co-administration task". While Article 18 paragraph (5) of the 1945 Constitution also affirms, that "the regional government exercises the broadst autonomy, except the governmental affairs determined by law to be the Central Government affairs".

Based on the above provisions, the existence of regional government has constitutional rights to regulate and manage their own government affairs according to the principle of autonomy. This provision has been reduced by the existence of provisions in the Law Number 23 of 2014, especially Article 9 paragraph (1), paragraph (2), paragraph (3), paragraph (4), and paragraph (5); Article 11 paragraph (1), paragraph (2), and paragraph (3); Article 12 paragraph (1), paragraph (2), and paragraph (3); Article 13 (1), paragraph (2), paragraph (3), and paragraph (4); Article 14 paragraph (1), paragraph (2), paragraph (3), and paragraph (4); Article 15 paragraph (1), paragraph (2), paragraph (3), paragraph (4), and

paragraph (5); Article 16 paragraph (1) and paragraph (2); and Article 17 paragraph (1), paragraph (2), and paragraph (3). The articles as such (*a quo*) divide government affairs based on absolute, concruent and general government affairs.

The absolute government affairs are all matters which become the absolute authority of the central government which consists of: foreign policy, defense, security, national monetary and fiscal, religion and justice [vide Article 10 paragraph (1) of the Law Number 23 of 2014]. This provision has existed since the existence of the Law Number 22 of 1999 regarding Regional Government was enacted. The law is often referred to as a milestone in the birth of regional autonomy in Indonesia.

Outside of the absolute government affairs, there are also concurrent government affairs. This matter by Article 9 paragraph (4) of the Law Number 23 of 2014 is laid as the basis for implementing autonomy in this Law. Whereas the general government affairs are defined as matters which are under the authority of the President as the Head of Government or in other words, the general government affairs are the basis for the presence of co-administration task as mandated by Article 18 paragraph (2) of the 1945 Constitution.

The existence of the concurrent affairs that put the government affairs carried out jointly between the central, provincial and regency/city level makes the autonomy mandated by the Constitution no longer be fully implemented. All government affairs can no longer be carried out autonomously by the regency/city government as the meaning of the principle of autonomy is referred to *lijterlijk*.

If in the absolute government affairs, all affairs are carried out by the central government. In the general government affairs, the authority is also in the hands of the central government in this case the President, so in reality, outside of these two matters, the authority to regulate and manage various remaining government affairs (*residual power*) becomes regional authority based on the principle of autonomy.

In such a position, the will of the Constitution in Article 18 paragraph (5) of the 1945 Constitution to bring the broadst autonomy by giving the widest space to the regions to regulate and manage their own government affairs is impossible to carry out.

On the other hand, the division of concurrent government affairs meant obviously cannot be carried out autonomously by the region, because the central hegemony over the authority which is the sole basis of the region

can manage this authority, arranged in such a way by the Center through this Law. This is seen in the provisions of Article 16 of the Law Number 23 of 2014 which confirms the authority of the central government over the concurrent government affairs, namely:

a. establishing norms, standards, procedures and criteria in the context of administering Government Affairs; and

b. carrying out development and supervision of the implementation of Government Affairs which are the authority of the Region.

The above provisions indicate that the division of concurrent governmental affairs which, if decentralized, will be the basis of regional autonomy is entirely dependent on the central government. The center can take it fully, decentralize to the provinces, to regencies/cities, or use deconcentration. More clearly manifestation of the division of concurrent government affairs can be seen in the appendix to the Law Number 23 of 2014 which quantitatively provides a very small and limited portion of government affairs that can be carried out by regencies/cities.

The history of the formation of our Constitution leaves many lessons. One of the important lessons is the presence of the consensus of the makers of our

Constitution to give birth to a decentralized form of the Unitary State.

This consensus is built on the full awareness that Indonesia is a nation that is truly made up of diversity. The diversity shall continue to be given space in the State which will be formed later. The diversity can only grow, if it is not forced to be generalized. Therefore, the building of the Unitary State which in many practices in other countries tend to be very centralistic cannot be used for diverse Indonesian building.

The above consensus at the same time ended the long debate of the drafters of the Constitution in the session of the Investigating Committee for Preparatory Work for Independence (BPUPKI) and the Preparatory Committee for Indonesian Independence (PPKI) in 1945 who wanted to form a federalist state on one side and a unitary state on the other, at that time. Based on this view, the 1945 Constitution formulated the form of a unitary state as affirmed in Article 1 paragraph (1) of the 1945 Constitution. However, on the other hand, the 1945 Constitution also provided space for the regions based on their original rights and privileges, as authorized by Article 18 of the 1945 Constitution (Article 18 of the 1945 Constitution confirms: The division of Indonesian regions into large and small regions, with the form of the

Government structure determined by Law, by considering and observing the basis of deliberation in the State government system, and the original rights in special regions. Elucidation of Article 18 of the 1945 Constitution confirms, as follows: Because the Indonesian State is an *eenheidsstaat*, then Indonesia will not have regions in its environment that are also *staat* (state). Indonesian regions will be divided into provincial regions and the provincial regions will also be divided into smaller regions.In regions that are autonomous (*streek* and *locale rechtsgemeenschappen*) or are merely administrative regions, all according to the rules that will be determined by law. In regions that are autonomous, regional representative bodies will be held, because even in the regions the government will be based on consultation.

Commitment to bring a decentralized unitary state is now collided with the presence of the Law Number 23 of 2014 as requested by the petitioners. In the law as such (*a quo*), the desire to centralize power or at least limit the authority of the regions is very visible.

The denial of the consensus of the nation's founders through the formulation of the Constitution at the beginning of independence, not only has the potential to increase the length of the bureaucratic chain and the poor

public services, but it may also present a government that tends to be arbitrary, in fact it is not impossible to participate in presenting the seeds of national disintegration.

If we want to remember the history. So, one of the demands of the 1998 reform was the desire to change the centralized system of government to be decentralized government. The People's Consultative Assembly of Indonesia (MPR RI) at that time as the highest state institution through Decree the People's Consultative Assembly (MPR) Number XV/MPR/1998 regarding the Administration of Regional Autonomy; Arrangement for the Division and Utilization of Equitable National Resources; and Central and Regional Fiscal Balances within the Framework of the Unitary State of the Republic of Indonesia recognize that regional development is an integral part of national development that shall be implemented through regional autonomy, equitable regulation of national resources, and central and regional financial balances.

The administration of regional autonomy, regulation, division and utilization of national resources and financial balance between the center and the regions during the New Order had not been carried out proportionally in accordance with the principles of

democracy, justice and equality (See Decree of the People's Consultative Assembly (TAP MPR) Number XV/MPR/1998). Once again, these are the things that contributed to the presence of the 1998 reform movement with the hope that significant improvement will occur in the context of central-regional relations. The spirit of Decree of the People's Consultative Assembly (TAP MPR) as such (*a quo*) also inspired the presence of the current amendment to Article 18 of the 1945 Constitution.

The existence of the Law Number 23 of 2014 which attracts many regency/city authorities also violates the will of the Constitution to guarantee the constitutional rights of citizens as stipulated in the 1945 Constitution.

The right to live properly for example as regulated in Article 27 paragraph (2) in conjunction with Article 28E of the 1945 Constitution was eroded because many citizens could no longer maintain or even obtain a decent life. For example, locus fishermen who live and operate in each regencies can no longer ask for help or receive assistance from the regency government, because based on Article 14 of the Law Number 23 of 2014, the regency government no longer has authority in the field of maritime affairs.

Likewise with the complaints of many citizens who make permit mining Excavation C. They have to make it to

the Province which the distance is not as close as if making it to the regency where they live. Citizens who want to do business in the field of mining excavation C are those who are economically not too well established.

The constitutional rights of citizens to get good educational services as guaranteed by the Constitution of Article 28C paragraph (1) in conjunction with Article 31 in conjunction with Article 34 paragraph (3) of the 1945 Constitution, is also impaired. The free education program launched by many regencies/cities from elementary school to senior high school can now only be carried out up to junior high school level. The authority to manage senior secondary education based on the Law Number 23 of 2014 is under the authority of the Provincial Government. The transfer of authority made many provincial government unable to allocate their education sector budget to provide free education at the senior high school for all students in the province. At that point, the constitutional rights of citizens, especially for those who are unable, become a problem.

The final issue which is the main concern of the Expert in the petition of the petitioners to the Honorable Court is the matter of cancellation of the Regional Regulation by the Executive Officer in this case the Governor for the Regulation of Regency/City Government and

the Ministry of Home Affiars for the Regulation of Provincial Government. The cancellation mechanism referred to can only be corrected through administrative efforts in the form of a rebuttal to the Ministry of Home Affairs in the case of the Regulation of Regency/City Government and the President in the case of the Regulation of Provincial Government as regulated in Article 251 of the Law Number 23 of 2014.

In legislation theory, review by executive institution (*executive review*) is not something new, it is even a necessity in many countries. As we know, the function of the executive review is to ensure that the making of laws and regulations that is the authority of the lower executive unit does not conflict with the higher laws, including the laws and regulations made by the executive unit authorized to carry out referred review.

Nevertheless, executive review is only one of the review instruments of the laws and regulations other than judicial review. The existence of executive review cannot shift the position of judicial review, on the contrary the existence of judicial review can negate the existence of the executive review.

Judicial review in a country that asserts itself as rule of law, as affirmation of Article 1 paragraph (3) of the 1945 Constitution is a condition for the establishment

of the rule of law itself. The laws and regulations is only worthy of being reviewed by a legal institution called the judiciary. In other language, a legal product is only valid if it is reviewed through a legal institution called the judiciary. That is the main breath of the rule of law as taught also in various theories of the dispersal and separation of powers which lead to the importance of mutual control and balance (checks and balances) within a country.

The existence of Article 251 of the Law as such (*a quo*) in addition to violating the logic and building of the Indonesian state law as mandated by Article 1 paragraph (3) of the 1945 Constitution also negates the role and function of the Supreme Court as an institution authorized to examine the laws and regulations under the Law as affirmed in Article 24 paragraph (1) of the 1945 Constitution.

In the meantime, the Regional Regulation is a legal product that not only contains the follow-up of higher laws and regulations, but also contains local specialties and needs within the framework of autonomy. The regional regulation is also formed by the regional head and the Regional House of People's Representatives (DPRD) both elected through direct general election. In other words, the Regional Regulation is formed based on the principle

of people's sovereignty, because it is formed by the executive and legislative institutions formed through the General Election as the implementation of people's sovereignty.

In this latter context, formally the formation of the Regional Regulation is the result of the manifestation of people's sovereignty carried out through the Regional Head and the Regional House of People's Representatives (DPRD). The people's sovereignty, as we know it, is mandated by Article 1 paragraph (2) of the 1945 Constitution. On the other hand, materially, the Regional Regulation is a legal formulation of the local needs and specificities of each region. Therefore, when the content of the material is considered to be contrary to higher laws or regulations or government ethics, for example, then the review cannot only be carried out administratively as the character of the executive review in many places. The review of this matter should ideally also be given to the judiciary through judicial review.

With regard to the three main matters that the Expert has described above, the Expert is of the view that the Law Number 23 of 2014, especially regarding the three matters above, can prove its unconstitutionality. It is unconstitutional not only because the content of its content violates a number of principles, principles and

norms in the Constitution. However, far deeper, the existence of the Law as such (*a quo*) is also a form of denial of the consensus of the nation's founders to present Indonesia as a decentralized unitary state in response to the character of Indonesia as a plural or diverse unitary state.

4. Prof. Dr. Ir. H. Abrar Saleng, S.H., M.H

Introduction:

- Giving appreciation to the government and the People's Representative Council of Indonesia (DPR RI) who have worked hard in reviewing, compiling, making and ratifying the Law Number 23 of 2014 regarding Regional Government.
- The promulgation of the Law Number 23 of 2014 regarding Regional Government raises pros and cons in the community, and government administrator.
- Specifically related to the transfer of authority to manage Natural Resources (SDA) from the Regency/City Government to the Central Government and partly to the Provincial Government.
- In law, it is not only those who get new authority that shall be protected by law, but those who lose authority shall also be protected, it means there is agreement and sincerity

- Anyone who loses authority without sincerity, will inevitably question why that authority is lost? And how can that authority be returned? Moreover, the lost authority is not based on constitutional norms and existing legal principles.
- That question can only be answered by the Constitutional Court Judges

Constitutional Basis for Regional Autonomy

- Chapter VI Article 18 paragraph (1) of the 1945 Constitution mandates, "The Unitary State of the Republic of Indonesia is divided into provincial regions where the provincial region is divided into Regencies/Cities, which each province, regency, and city have regional governments which have been regulated in the Law".
- Article 18 paragraph (2) of the 1945 Constitution mandates, "Provincial, regency and city governments regulate and manage their own government affairs according to the principle of autonomy and co-administration task"
- Article 18 paragraph (5) of the 1945 Constitution mandates: "Regional government exercises the broadest autonomy, except the governmental affairs determined by law to be the Central Government affairs"

- Regional autonomy only exists in the unitary state and the focus of regional autonomy is on the regency/city government.

The Autonomous Constitutional Basis for Management of Natural Resources

- Article 18 A paragraph (2) "financial relation, public services, utilization of natural resources and other resources between the central government and regional government are regulated and carried out fairly and in accordance with the law"
- Regional autonomy exists only in the unitary State and the focus of regional autonomy is on the regency/city government.
- Autonomy of management (regulation, management and supervision) of exploitation and utilization of natural resources is a demand for reform of governmental administration.

Regional Order and Authority

- Balance between Region and authority. Each area of government shall be followed by authority.
- Authority contains regulation, issuance of permits, guidance and supervision in the area of management of natural resources.
- Management of natural resources within the regency/city area is the regency/city authority.

- Management of natural resources, which exists across regency is the Province authority.
- Management of natural resources which exists across provinces is the authority of the Central Government.

Norm of the Law Number 23 of 2014 which is contrary to Constitutional Norms

- Article 14 paragraph (1), paragraph (3) and in conjunction with Article 15 paragraph (1) contradicts Article 18 paragraph (2), paragraph (5) and Article 18A paragraph (2) of the 1945 Constitution,
- The provisions in the articles of the Law Number 23 of 2014, do not give authority to the regency/city government in the sector of forestry, marine, energy and mineral resources.
- The previous Local Government Law Law Number 32 of 2004 gives the authority of the regency/city government in three government affairs related to natural resources which are also based on the same constitution of the 1945 Constitution.

Legal Implication of the Law Number 23 of 2014

1. Contradicting the principle of regional autonomy; simplifying services, shortening the distance between the government as a servant and the community as the party served, efficient, effective in the administration

of local government to accelerate the welfare of the community in the area.

2. Firmly and explicitly eliminating the position and authority of the Regency/City as a subject that can manage its natural resources in the sector of forestry, marine, energy and mineral resources. (Article 14 paragraph (1) and (3) and Article 15 paragraph (1).
3. Causing confusion both for the people, and for government administrators. Because the Law Number 23 of 2014 both philosophical and norms contradict the Law Number 41 of 1999 and the Law Number 4 of 2009 and the Law Number 27 of 2007 which are still in force today.
4. Reducing investor interest in natural resource management, due to licensing in the Province and in the Ministry but with business activities in the regency/city area.
5. Regent/Mayor apathetic alias indifference, ineffective in carrying out supervision and control because the permit is issued by the Governor.

The Constitution mandates balance between level of government

- The meaning of Article 18 paragraph (2) of the 1945 Constitution has placed a balanced position between the Provincial Government and the regency/city government in

terms of regulating their respective territories based on the principle of autonomy.

- Equilibrium shall be interpreted and understood only in the context of being the same as the Regional Government, not in a position, for example, on territorial size. In a position like this, it is very reasonable, fair and proper if the regency/city government is given proportional authority in the management of natural resources and other resources in its territory.
- This principle of balance, not only on equal political liberty but also applies to equal social and economic resources, as mandated by Article 28 A of the 1945 Constitution.

Justice in Natural Resource Management

a. Whereas Article 18A paragraph (2) of the 1945 Constitution also mandates “financial relation, public services, utilization of natural resources and other resources between the central government and regional government which are regulated and carried out fairly and in accordance with the law”
b. Position and portion that corresponds or is the same between level of government to produce harmony. The provisions of Article 14 paragraph (1) and paragraph (3) and Article 15 paragraph (1) of appendix Y, BB and CC of

the Law Number 23 of 2014, do not find any "balance" and "compatibility", in terms of natural resource management.

c. The abolition of the rights, authority and involvement of the regency/city government in concurrent government affairs, especially in the management of natural resources and other resources, has certainly resulted in imbalance, inequality, mismatches, and consequently injustice for the region.

d. Whereas the regency/city government is closer emotionally, culturally, and materially and feels entitled to "management (regulation, administration and supervision)" of natural resources and other resources within its territory.

e. Then logically if there is natural disaster, damage and environmental impact that causes suffering for the community, then the community and the the regency/city Government will first feel it.

f. Such conditions and position, is it fair that the regency/city government is not involved at all and given authority in the management and utilization of the natural resources and other resources?

g. The application of the principle of "***justitia est ius suum cuique tribuere***" (justice is given to each person

for which he is entitled) should also animate Article 18A paragraph (2) of the 1945 Constitution.

Conclusion

- The constitutional mandate in Chapter VI regarding Regional Government is the division of territories and the division of authority equally. Balance is the basis of justice between the center and regions and between regions.
- The elimination or castration of the regency/city government authority in the management of natural resources, which is only based on the assumption and worries of lawmakers number 23 of 2014, so as not to create petty kings and potentially to abuse authority and environmental consideration is very unreasonable and insufficient to be used as a basis violated the constitution of Article 18 paragraph (1), paragraph (2), paragraph (5), and paragraph (6) Article 18A paragraph (2)
- Article 14 paragraph (1) and paragraph (3) and Article 15 paragraph (1) of the Law Number 23 of 2014, in addition to having clearly violated the constitution, has also resulted in setback in regional autonomy, especially the autonomy in the management of natural resources in regencies/cities, and back again in the

centralistic government period, the local people as welfare viewers and recipient or bearer of suffering.

- Article 14 paragraph (1) and paragraph (3) and Article 15 paragraph (1) of the Law Number 23 of 2014 have implication and have the potential to cause suffering for regency/city areas, especially regions that have natural resources, thus contradicting the mandate of Article 28 A "*everyone has the right to live and has the right to defend life and existance*" in accordance with the mandate of Article 33 paragraph (3) which guarantees state control over natural resources to be used for the greatest prosperity of the people.
- The regency/city authority over the management of natural resources (forestry, marine and energy and mineral resources) is a constitutional right that shall be returned because the regency/city is in direct contact with the people and is directly responsible for the people's welfare.
- Since the promulgation of the Law Number 23 of 2014, it has caused confusion not only citizens but also government administrators in the regions. As a result, it creates uncertainty, which has the potential to create unrest and will eventually lead to social unrest or tempest in the region.

- The Law Number 32 of 2004 has regulated harmoniously the authority between the government level in the management of natural resources based on the same constitution, but the interpretation of the Lawmakers Number 23 of 2014 are different.

Whereas in addition to submitting experts as mentioned above, to substantiate their postulate, the Petitioners at the hearing on April 28, 2016 have proposed 4 (four) witnesses, namely **Edy Alwi**, **Drs. Israr Dasuki Tasim, S.E., M.SI**, **Ilham**, and **Abdul Rachman Atd**, who rendered the verbal tertimony under oath in the trial stating cases that are essentially as follows:

1. Edy Alwi

- Whereas the witness is Chairman of the Indonesian Fishermen Association (NSI) of Batubara Regency;
- Whereas fishermen in Batubara Regency re around 30,000 people sailed from zone 0 to 4 miles after the existence of the Law Number 23 of 2014 regarding Regional Government felt disturbed and marginalized because the zone is no longer monitored and guarded by the regency while the provinces that has authority is constrained by distance (about 180 km), so that many fishermen are large-scale and use tools that are prohibited from going to sea in the zone, resulting in physical clashes

between fishermen and even burning which eventually lead to casualties;

- Whereas because there are no more fish in the 4-mile zone in the sea, fishermen go to sea in Malaysian waters as a result many are caught, while reporting to the province spends 5 million;
- Thus, traditional fishermen are impaired by the withdrawal of regency authority because there is no supervision and guidance;

2. Drs. Israr Dasuki Tasim, S.E., M.SI

- Whereas the witness is the Headmaster of SMA Negeri 5 Tangerang;
- Whereas since the transfer of management of SMA (Senior High School) and SMK (Vocational School) to the provinces, administrative implementation has become far, ineffective, and inefficient as in the case of student mutations and other teacher administration;
- Whereas the province will not be optimal in managing education affairs and will be a problem for parents of students who normally do not pay SPP because the free education policy has been rolled out as in Tangerang Regency;
- Whereas it will be an issue for the provincial government for the allowance of temporary teachers who are previously the regency authority;

- Whereas the issue of New Student Acceptance (PPDB) that occurs every year and which is never completed will become more prolonged if managed by the province;
- Whereas the local content determined by the province is ineffective because it is not prepared in advance, the equipment that has been prepared is not used, and the teacher is also not based on expertise, so the local content material is currently not running;
- Whereas the management of Vocational High School (SMK) requires special commitment because they prepare a generation that is ready to use in the business world and the industrial world, therefore regency/city authority is needed to accelerate access to aid and the budget;
- Whereas thus it is a setback if the management of SMA and SMK becomes the provincial authority because it will extend the bureaucracy.

3. Ilham

- Whereas the witness is the management of mining excavation C, Bandar Mekar Village, Tamban Catur Sub-district;
- Whereas the witness and the community of Bendar Mekar are harmed by a production operation permit that do not go out;

- Whereas obtaining a permit for the excavation C production operation requires a large amount of funds because the mining community shall contribute for obtaining a permit to the province added the distance between the village of residence and the province takes approximately 8 (eight) hours. Until now the permit has not been completed even though it has been 6-7 months;

4. Abdul Rachman Atd

- Whereas the witness is the Head of the Department of Transportation of Sukabumi City;
- Whereas after the Law as such (*a quo*), the terminal type is separated based on its authority. Terminal A (between, within, provinces/between cities) belonging to the center, Terminal B (in the provinces) belonging to the province, and Terminal C (city transportation) belonging to the regency;
- Whereas by separating the types of terminals when there are problems regarding operationalization at the terminals such as Christmas, New Year and Eid (lebaran), it will be difficult and long to anticipate while the community will blame the regency because all the terminals are located in the regency area;
- Whereas in the framework of carrying out the integration of the transportation node, the Government of Sukabumi City since 2001 has planned to relocate for terminal A,

which has spent a budget of approximately 100 billion and will operate this year and terminal B which has been built and is operating. With the Law as such (*a quo*), the management of terminal A and B is taken over by the central and provincial government;

[2.3] Considering whereas in response to the petition of the Petitioners, the President in his hearing on March 21, 2016 submitted verbal and written testimony received at the Registrar's Office of the Court on April 28, 2016 which elucidate the following matters:

I. SUBJECT MATTER OF THE PETITION OF THE PETITIONERS

Whereas in principle the Petitioners request to review whether:

1. Provisions for the division of authority between the central government and provincial and regency/city governments in Article 14 paragraph (1), paragraph (3), and Article 15 paragraph (1) of the Law as such (*a quo*) is **contrary to** Article 18 paragraph (2), paragraph (5), paragraph (6), Article 18A paragraph (1), Article 28C paragraph (2) and Article 28D paragraph (1) of the 1945 Constitution;
2. Provisions for the Regulation of Regency/City Government and the Regent/Mayor Regulation that conflict with the provisions of the higher laws and regulations, public interests, and/or decency are

canceled by the Governor as regulated in Article 251 paragraph (2), paragraph (3), paragraph (4) the Law as such (*a quo*) is contrary to Article 18 paragraph (2), paragraph (5), paragraph (6), Article 18A paragraph (1), Article 24A paragraph (1), Article 28C paragraph (2), and Article 28D paragraph (1) of the 1945 Constitution.

II. LEGAL STANDING OF THE PETITIONERS

In connection with the legal standing of the Petitioners, the Government argues as follows:

1. Whereas based on Article 51 Paragraph (1) of the Law Number 24 of 2003 regarding the Constitutional Court, it is stated that the petitioners are a party that consider their constitutional rights and/or authority to be impaired by the coming into effect of the law.
2. Whereas subsequently in the Constitutional Court Decision Number 006/PUU-III/2005 and Decision Number 11/PUU-V/2007 the loss of rights is determined by five conditions, namely:
   a. The petitioner’s constitutional rights and/or authorities granted by the 1945 Constitution;
   b. Those constitutional rights and/or authorities are deemed to have been impaired by the coming into effect of the law petitioned for review;

c. The loss of rights and/or authority shall be specific and actual or at least potential which according to logical reasoning will certainly occur;
d. There is a causal relationship (*causal verband*) between the loss referred to as the coming into effect of the law petitioned for review;
e. It is possible that with the granting of the petition the constitutional impairment will not or will not happen again.

3. Whereas the reviewing of the five conditions on the Petitioners' posita (basis of claim) is as follows:
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a. Whereas the Petitioners postulate the constitutional rights granted by the 1945 Constitution are Article 18 paragraph (2), paragraph (5), paragraph (6), Article 18A paragraph (1), Article 28C paragraph (2), and Article 28D paragraph (1) of the 1945 Constitution;
b. Whereas Article 18 paragraph (2), paragraph (5), paragraph (6), and Article 18A as such (*a quo*) do not regulate the authority of the regency government but rather regulate the Unitary State of the Republic of Indonesia divided into provincial regions, and provincial regions divided into regency and city areas, and the relationship of authority

between the central government and the provincial government, and regency government;

c. Whereas Article 28C paragraph (2) and Article 28D paragraph (1) regulates the rights of citizens and does not regulate the rights of regency government;

d. Whereas the petitioners in case Number 136/PUU-XIII/2015 is Regency Government; and the Petitioner II to the Petitioner XLVI in case Number 137/PUU-XIII/2015 are also Regency Government and not individual of Indonesian citizen;

e. Whereas based on the above arguments, the petitioners' argument on the constitutional rights or authorities in Article 18 paragraph (2), paragraph (5), paragraph (6), Article 18A paragraph (1), Article 28C paragraph (2) and Article 28D paragraph (1) of the 1945 Constitution is baseless or erroneous.

4. Whereas although the Petitioner I in case number 137/PUU postulates as an association, but from all the arguments there is no argument that states that the petitioners are an association legal entity that has received approval from the Ministry of Law and Human Rights in accordance with Regulation of the Ministry of Law and Human Rights Number 6 of 2014 regarding Legalization of the Association Legal Entity, therefore

the Petitioner I shall be considered as not legal entity.

5. Whereas even though the Petitioner XLVII in Case Number 137/PUU is an individual of Indonesian citizen, because the petitioners are not an individual involved in regional government activities, the Petitioners shall be deemed unauthorized in reviewing the Law as such (*a quo*).
6. Whereas in addition to the above matters, the government expresses its concern over the review of this Law submitted by the Regents for the following reasons:
   a. Whereas the regency government is an inseparable part of the central government, and also the provincial government, the three are a unity in carrying out national development in realizing the ideals of the nation contained in the preamble of the 1945 Constitution including: protect all the people of Indonesia and their entire native land, and in order to improve the public welfare, to advance the intellectual life of the people.
   b. Whereas the success of development will be largely determined by the solidarity, cohesiveness, and one language among the three in implementing all government policies as stipulated in various laws

and regulations.

c. Whereas the Regent based on Article 61 paragraph (2) of the Law as such (*a quo*) before being appointed as the Regent swears or promises as follows:

"For the sake of Allah/God, I swear/promise to fulfill my obligations as regional head in the best and fairest manner, uphold the 1945 Constitution of the Republic of Indonesia, and ***carry out all its laws and regulations in the best possible manner*** *and devote to the community, homeland, and nation".*

d. Whereas reviewing of the Law in the Constitutional Court is in essence not a form of carrying out the law but a form of supervision of the government and the People's Representative Council (DPR) that should be done by the people and not by the government apparatus. Government apparatus should show compliance or obedience to all laws and regulations issued by the government by implementing it as wide as possible.

e. Whereas in accordance with Article 67 of the Law as such (*a quo*), the obligations of regional head include: "obeying all provisions of the laws and regulations".

Based on the above arguments, the Government has the opinion that the Petitioners do not meet the legal

standing requirements and it is appropriate if the Honorable Constitutional Court Judges wisely **declares the Petitioner's petition cannot be accepted** *(niet ontvankelijke verklaard)*.

III. ELUCIDATION OF THE GOVERNMENT OF THE MATERIAL REQUESTED BY THE PETITIONERS

Regarding the material filed by the Petitioners, the Government submits the following information:

1. Firstly, the Government conveys that the provisions of Article 4 paragraph (1) of the 1945 Constitution states "*The President of the Republic of Indonesia holds the authority of government according to the Basic Law*", the philosophical meaning contained in these provisions is that the holder of Government power in the Unitary State of the Republic of Indonesia is the President, including the division of concurrent government affairs between the Central Government, Provincial Government and Regency/City Government, thus it can be analogous that the authority exercised by the Regional Government/Regional Head is currently the authority given/arranged by the Government/President to realize better national and state life arrangement in order to achieve the ideals contained in the Preamble of the 1945 Constitution.

2. Whereas the 1945 Constitution of Article 18 paragraph (5) has given the authority that is open legal policy to the government and the People's Representative Council (DPR) to regulate and carry out the broadest autonomy which reads as follows:

   "Regional government exercises the broadest regional autonomy, except the governmental affairs determined by law to be the central government affairs".

3. Whereas on Article 9 of the Law as such (*a quo*) regulates the classification of government affairs and the division of authority between the central government, provincial government and regency/city government which reads as follows:

   (1) Government affairs consist of absolute government affairs, concurrent government affairs, and general government affairs.

   (2) Absolute government affairs are government affairs which are the full authority of the central government.

   (3) Concurrent governmental affairs are government affairs that are divided between the central government and the provincial and regency/city regions.

(4) Concurrent government affairs submitted to the regions become the basis for the implementation of regional autonomy.

(5) General government affairs are government affairs which become the authority of the President as the head of government.

4. Whereas the argument of the petitioners that states that the regency/city government is not authorized to manage the sector of forestry and energy and mineral resources is a wrong opinion because in fact the regency/city government is given the authority to manage it as regulated in Article 14 paragraph (2) and paragraph (4) as follows :

(2) Government affairs in the sector of forestry relating to the management of regency/City forest parks are the authority of regency/city region.

(4) Government affairs in the sector of energy and mineral resources related to the direct use of geothermal energy in regency/city area is the authority of regency/city region.

5. Whereas thus the articles as such (*a quo*) reviewed do not contain discriminatory values, but instead apply to all regency governments, and also contain values of justice aimed at the welfare of all Indonesian people

and not limited to regions that are rich in natural resources.

6. Regarding the reviewing of Article 251 paragraph (2), paragraph (3), paragraph (4), and paragraph (8) the government can convey as follows:
   a. Whereas the purpose of the article as such (*a quo*) is the existence of a tiered supervision from the central government and/or provincial government to the regency government, and this is important as the realization of the Unitary State of the Republic of Indonesia. The Regency Government is part of the provincial government and part of the Central Government.
   b. Whereas cancellation made by the Governor is not an arbitrary cancellation but is a conditional cancellation, namely cancellation of regency regulation that contradicts the laws and regulations, public interest and/or decency.
   c. Whereas with regard to the cancellation carried out by the Governor, the Regent is given the opportunity to submit an objection to the Ministry of Home Affairs stipulated in Article 251 paragraph (8).
7. Whereas essentially the Law as such (*a quo*) is formed with consideration
   b. Whereas the administration of regional government is

directed to accelerate the realization of community welfare through improving services, empowerment, and community participation, as well as enhancing regional competitiveness by taking into account the principles of democracy, equity, justice and the uniqueness of an area in the unitary state system of the Republic of Indonesia.

c. Whereas the efficiency and effectiveness of administration and regional government need to be improved by paying more attention to aspects of the relationship between the central and regional government and between regions, the potential and diversity of the region, as well as opportunities and challenges of global competition in the unity of the system of state government administration.

8. Whereas in principle every rule made by the state is solely to create a better life order in order to maintain the sustainability of government and progress in all aspects of life in an effort to realize the ideals of the Indonesian people as mandated in the 1945 Constitution, as well as the provisions as such (*a quo*) is currently being reviewed.

9. Regional autonomy is the implementation of the principle of government decentralization. The definition of autonomy here is that the region has the

authority to carry out regional management both through the issuance of regional policies and to finance itself not depending on the finances from the center. Autonomy shall also mean that there has been a transfer of certain authorities from the central government to regional government. Regional autonomy is not just a decentralization movement that divides what was once at the center to be regionalised, but is a movement that is part of a major reform effort towards better governance [*governance reform*].

10. Regional autonomy gives the right, authority and obligation to autonomous regions to regulate and manage their own household. The administration of the government is divided based on the criteria of externality, accountability and efficiency by taking into account the harmony of relation between regions. The government affairs which become the authority of regional government consist of compulsory and optional affairs as regulated in Article 9 of the Law Number 23 of 2014. Furthermore, in the elucidation section it is emphasized that mandatory affairs are very basic matters relating to the basic rights and services of citizens.

11. Mandatory affairs are affairs that shall be held by the regional government in the regional autonomy

system. The local government shall guarantee the availability of services both from resources and funds. In connection with that, Article 13 of the Law Number 23 of 2014 has determined the relationship in the field of public services between the government and regional government.

12. Whereas the object of the petition as such (*a quo*) is by no means an obstacle for the Petitioners to carry out development in all aspects of life, which in its implementation can coordinate with the Provincial Government and the Central Government, of course this will further facilitate the Regency/City Government in realizing development in each area.

13. Whereas in the process of forming laws and regulations carried out very accurately and carefully based on experience, analysis in order to improve regulations that are not in accordance with the dynamics of national life and efforts to anticipate potential problems that might occur in the future, as well as the object of petition as such (*a quo*).

14. The Government needs to convey in this very noble trial, that the resolution of problems between State Administrators should be resolved internally in advance based on the principle of consensus agreement in order to reach the best agreement.

15. Whereas in order to maintain the authority of the state administration, the Government recommends the Petitioners, in this case the Regents, to consider to re-withdraw this review which is possible based on Article 35 paragraph (1) of the Law Number 24 of 2003 regarding the Constitutional Court which reads: "The petitioners can re-withdraw the petition before or during the examination of the Constitutional Court conducted". This has an important meaning for the community and the international world, as the main indicator that the Unitary State of the Republic of Indonesia organized by the central government, provincial government, and regency government is one word, one determination, one team, one vision to bring prosperity to all Indonesian people.

IV. PETITUM (CLAIM)

Based on the above-mentioned explanation, the Government appeals to the Honorable Chief Justice/Member of the Honorable Tribunal of the Constitutional Court of the Republic of Indonesia examining, adjudicating, and deciding on the petition for reviewing the Law Number 23 of 2014 regarding Regional Government, may render the following decision:

1. To receive the government statement entirely;
2. To declare that the Petitioners have no legal standing;

3. To dismiss the petitioned review of the Petitioners entirely or at least to state the petitioned review of the Petitioners not acceptable (*niet onvankelijk verklaard*);
4. To declare the Law Number 23 of 2014 regarding Regional Government does not contradict the 1945 Constitution of the Republic of Indonesia.

However, if the Honorable Chief Justice/the Honorable Tribunal of the Constitutional Court has other opinion, we request a wise and the fairest possible decision *(ex aequo et bono)*.

[2.4] Considering whereas with regard to the petition of the aforementioned Petitioners, the Regional Representative Council in the hearing on April 14, 2016 submitted verbal and written testimony which elucidated the following matters:

1. Authority of the Constitutional Court

Article 24C paragraph (1) of the 1945 Constitution in conjunction with Article 10 paragraph (1) of the Law Number 24 of 2003 regarding the Constitutional Court as amended by the Law Number 8 of 2011 (hereinafter abbreviated to the Constitutional Court Law) states that the Constitutional Court has the authority to adjudicate at the first and last instance that the decision is final, to: a) examine the Law against the 1945 Constitution; b) decide upon disputes over the authority of state

institution whose authority is granted by the 1945 Constitution; c) decide upon the dissolution of political parties; and d) decide upon disputes over the results of general election.

Related to the authority of the Constitutional Court to examine the Law against the 1945 Constitution, it is also affirmed in Article 9 paragraph (1) of the Law Number 12 of 2011 regarding the Formation of Laws and Regulations that: “In the case that an Law is alleged to be contrary to the 1945 Constitution of the Republic of Indonesia, the examination is carried out by the Court Constitution”.

Thus, in the view of the Regional Representative Council of Indonesia (DPD RI), the Constitutional Court has the authority to conduct the examination of the provisions of Article 9 paragraph (1), paragraph (2), paragraph (3), paragraph (4), and paragraph (5), Article 11 paragraph (1), paragraph (2), and paragraph (3), Article 12 paragraph (1), paragraph (2), and paragraph (3), Article 13 paragraph (1), paragraph (2), paragraph (3), and paragraph (4), Article 14 paragraph (1), paragraph (2), paragraph (3), and paragraph (4), Article 15 paragraph (1), paragraph (2), paragraph (3), paragraph (4), and paragraph (5), Article 16 paragraph (1) and paragraph (2), Article 17 paragraph (1), paragraph (2), and paragraph (3), Article 21, Article 27 paragraph (1) and paragraph (2),

Article 28 paragraph (1) and paragraph (2), Article 251 paragraph (2), paragraph (3), paragraph (4), and paragraph (8) of the Law Number 23 of 2014 regarding Regional Government, against Article 18 paragraph (1)), Article 18 paragraph (2), Article 18 paragraph (5), Article 18 paragraph (6), Article 18A paragraph (1) and Article 18A paragraph (2) Article 24A paragraph (1), Article 24C paragraph (2), Article 28D paragraph (1) of the 1945 Constitution.

2. Legal Standing of the Petitioners

The qualifications that shall be fulfilled by the Petitioners as the Party are regulated in the provisions of Article 51 paragraph (1) of the Constitutional Court Law which states that the Petitioners are a party that considers his/her constitutional rights and/or authority to be impaired by the enactment of the law, namely:

a. individual of Indonesian citizen;
b. customary law community unit as long as it is still alive and in accordance with the development of the community and the principles of the Unitary State of the Republic of Indonesia regulated in the Law;
c. public or private legal entity; or
d. state institution.

Based on the provisions of Article 51 paragraph (1) of the Constitutional Court Law, there are 2 (two) conditions

that shall be fulfilled to review whether the Petitioners have legal standing in the case of judicial review, namely:

1. fulfillment of the qualifications to act as the Petitioners; and
2. constitutional rights and/or authorities of the Petitioners who have been impaired by the enactment of a Law.

Based on the foregoing case, related to the Petitioners' legal standing, the Regional Representative Council of Indonesia (DPD RI) holds the view:

a. Whereas related to the qualifications to act as the Petitioner, the Petitioner I, namely the Association of Indonesian District Governments (APKASI), in submitting the petition as such (*a quo*) in the view of the Regional Representative Council (DPD) does not have legal standing, because the Association of Indonesian District Governments (APKASI) is not public legal entity representing the regions in the case as such (*a quo*).
b. Whereas related to the qualifications to act as the Petitioner, the Petitioner II to the Petitioner XLVI in submitting the petition as such (*a quo*) in the view of the Regional Representative Council (DPD) has legal standing and therefore can be as the Petitioners.

c. Whereas related to the qualifications to act as the Petitioner, the Petitioner XLVII does not meet the qualifications as the Petitioner, because it does not directly represent the interests of the region as a public legal entity and there are no losses incurred or will arise with the case as such (*a quo*) on him.

d. Whereas related to the existence of constitutional rights and/or authorities of the Petitioner who is impaired by the enactment of a Law, based on the requirements determined by the Constitutional Court as stipulated in Decision Number 006/PUU-III/2005 and Number 011/PUU-V/2007, in the view of the Regional Representative Council of Indonesia (DPD RI), the Petitioner II to the Petitioner XLXI fulfill the requirements and therefore can be as the Petitioner.

However, if the Honorable Tribunal of the Constitutional Court has another view, the Regional Representative Council of Indonesia (DPD RI) will respect and submit to the Assembly's decision.

3. Reviewing of the Regional Government Law

For petition for judicial review of Article 9 paragraph (1), paragraph (2), paragraph (3), paragraph (4), and paragraph (5), Article 11 paragraph (1), paragraph (2), and paragraph (3), Article 12 paragraph (1), paragraph (2), and paragraph (3), Article 13 paragraph (1),

paragraph (2), paragraph (3), and paragraph (4), Article 14 paragraph (1), paragraph (2), paragraph (3), and paragraph (4), Article 15 paragraph (1), paragraph (2), paragraph (3), paragraph (4), and paragraph (5), Article 16 paragraph (1) and paragraph (2), Article 17 paragraph (1), paragraph (2), and paragraph (3), Article 21, Article 27 paragraph (1) and paragraph (2), Article 28 paragraph (1) and paragraph (2), Article 251 paragraph (2), paragraph (3), paragraph (4), and paragraph (8) of the Law Number 23 of 2014 regarding Regional Government, towards Article 18 paragraph (1), Article 18 paragraph (2), Article 18 paragraph (5), Article 18 paragraph (6), Article 18A paragraph (1) and Article 18A paragraph (2) Article 24A paragraph (1), Article 24C paragraph (2), Article 28D paragraph (1) of the 1945 Constitution, the Regional Representative Council of Indonesia (DPD RI) submits information as follows:

a. Whereas in the provisions of Article 1 paragraph (1) of the 1945 Constitution it is stated that the State of Indonesia is a unitary state in the form of republic. The logical consequence as Unitary State is the formation of the government of the State of Indonesia as national government for the first time and then the national government which then forms the Region in accordance with the provisions of laws and regulations.

Then in Article 18 paragraph (2) of the 1945 Constitution, it is stated that the regional government has the authority to regulate and manage its own government affairs according to the principle of autonomy and co-administration task. What is meant by the principle of autonomy, based on the provisions of Article 1 number 7 of the Regional Government Law, is the basic principle of the implementation of Regional Government based on Regional Autonomy. Whereas the understanding of co-administration task based on the provisions of Article 1 number 11 is the assignment from the Central Government to the autonomous regions to carry out a part of government affairs which are the authority of the central government or from provincial government to regencies/cities to carry out a part of government affairs which are the authority of provincial region. In order to carry out the principle of autonomy and co-administration task, based on the provisions of Article 18 paragraph (5) of the 1945 Constitution, the regional government exercises the broadest autonomy that is carried out based on the principle of a unitary state. In a unitary state, the sovereignty is only in the state government or national government and there is no sovereignty in the Region. Therefore, no matter how much autonomy is given to the Region, the final

responsibility for the administration of the Regional Government will remain in the hands of the Central Government, and therefore the realization of the transfer of all autonomous affairs as wide as possible to the Regions is a necessity, except the governmental affairs determined by law to be the Central Government affairs. In this case, the People's Representative Council of Indonesia (DPD RI) believes that the regulation on the implementation of regional autonomy is regulated in the Regional Government Law and its attachments are inseparable.

b. Whereas related to the division of affairs or authorities between the Central Government and Regional Government, Article 18A of the 1945 Constitution states that the relationship of authority between the Central Government and Regional Government shall be regulated by law and carried out fairly and in harmony. The regulation on the authority relationship is further regulated in the Law Number 23 of 2014 as amended by the Law Number 9 of 2015. In the provision of Article 4 paragraph (2) of the Law Number 23 of 2014 it is stated that regency/city regions other than status as regions are also administrative regions which become the working area for regents/mayors in conducting **general government affairs** in the regency/city area. What is meant by

'general government affairs' based on the provisions of Article 9 paragraph (5) of the Law Number 23 of 2014 is government affairs which are under the authority of the President as the head of government. The President in carrying out government affairs is carried out by state ministers and **regional government administrators** to protect, serve, empower and improve the welfare of the community. In addition to general government affairs, based on the provisions of Article 9 paragraph (1), paragraph (2), and paragraph (3) of the Law Number 23 of 2014, absolute government affairs and concurrent government affairs are also known. The absolute government affairs are government affairs that are fully the authority of the Central Government, namely foreign policy, defense, security, justice, monetary and fiscal, and religion (See the provisions of Article 10 paragraph (1) of the Law Number 23 of 2014 regarding Regional Government). The concurrent government affairs are government affairs that are divided between the Central Government and the Provincial Region and Regency/City Region. Based on the provisions of Article 9 paragraph (1) of the Law Number 23 of 2014, the concurrent government affairs that are 'submitted' to the Region become the basis for the implementation of Regional Autonomy. The meaning of the word 'submitted' in the

provisions of this paragraph, according to the view of the Regional Representative Council of Indonesia (DPD RI) that in essence the affair is a central affair. However, in order to carry out the principles of decentralization, deconcentration and co-administration task as stated in Article 5 paragraph (4) of the Law Number 23 of 2014, the Central Government 'surrenders or divides' a part of its affairs to the Regional Government. This has become the implementation of regional autonomy. If the Central Government does not divide government affairs with the Regional Government, the Government will become centralistic and violate the principle of regional autonomy. On the other hand, if all government affairs other than absolute government affairs are given to the regions, there is a concern that regional imbalance will occur, because not all regions have the same potential resources.

c. Whereas based on the reasons as elucidated in paragraph a and b above, if related to the petition of the case as such (*a quo*), the provisions of Article 9 paragraph (1), paragraph (2), paragraph (3), paragraph (4), and paragraph (5), Article 11 paragraph (1), paragraph (2), and paragraph (3), Article 12 paragraph (1), paragraph (2), and paragraph (3), Article 13 paragraph (1), paragraph (2), paragraph (3), and

paragraph (4), Article 14 paragraph (1), paragraph (3), and paragraph (4), Article 15 paragraph (1), paragraph (2), paragraph (3), paragraph (4), and paragraph (5), Article 16 paragraph (1) and paragraph (2), Article 17 paragraph (1), paragraph (2), and paragraph (3), Article 21, Article 27 paragraph (1) and paragraph (2), Article 28 paragraph (1) and paragraph (2), Article 251 paragraph (2), paragraph (3), paragraph (4), and paragraph (8) of the Law Number 23 of 2014 regarding Regional Government shall remain in force and have legal force binding.

d. Whereas based on the reasons as elucidated in paragraph a and b above, if related to the petition as such (*a quo*) Article 14 paragraph (2) of the Law Number 23 of 2014 regarding Regional Government is declared invalid.

Thus we convey the testimony of the Regional Representative Council of Indonesia (DPD RI) to be taken into consideration for the the Honorable Tribunal of the Constitutional Court to examine, decide and adjudicate the Case as such (*a quo*) and be able to give a decision as follows:

1. To receive the testimony of the Regional Representative Council of Indonesia (DPD RI) entirely;

2. To declare Article 9 paragraph (1), paragraph (2), paragraph (3), paragraph (4), and paragraph (5), Article 11 paragraph (1), paragraph (2), and paragraph (3), Article 12 paragraph (1), paragraph (2), and paragraph (3), Article 13 paragraph (1), paragraph (2), paragraph (3), and paragraph (4), Article 14 paragraph (1), paragraph (3)), and paragraph (4), Article 15 paragraph (1), paragraph (2), paragraph (3), paragraph (4), and paragraph (5), Article 16 paragraph (1) and paragraph (2), Article 17 paragraph (1), paragraph (2), and paragraph (3), Article 21, Article 27 paragraph (1) and paragraph (2), Article 28 paragraph (1) and paragraph (2), Article 251 paragraph (2), Paragraph (3), Paragraph (4), and Paragraph (8) of the Law Number 23 of 2014 regarding Regional Government remains in force and has binding legal force.
3. To declare Article 14 paragraph (2) of the Law 23 of 2014 regarding Regional Government is declared invalid.

If the Court has a different opinion, we request the fairest possible decision *(ex aequo et bono).*

[2.5] Considering that the Petitioners convey a written conclusion accepted at the Office of the Clerk of the Court on May 4, 2016 basically indicating that they remain on their position;

[2.6] Considering that in order to abbreviate the description of this decision, everything that happens in the trial is sufficiently appointed in the Minutes of the Trial, which is an inseparable part of this decision;

3. LEGAL CONSIDERATION

Authority of the Court

[3.1] Considering that based on the provisions of Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution), Article 10 paragraph (1) letter a of the Law Number 24 of 2003 regarding the Constitutional Court as has been amended by the Law Number 8 of 2011 regarding the Amendment to the Law Number 24 of 2003 regarding the Constitutional Court (State Gazette of the Republic of Indonesia of 2011 Number 70, Supplement to the State Gazette of the Republic of Indonesia Number 5226, hereinafter referred to as the Constitutional Court Law), Article 29 paragraph (1) letter a of the Law Number 48 of 2009 regarding Judicial Power (State Gazette of the Republic of Indonesia of 2009 Number 157, Supplement to the State Gazette of the Republic of Indonesia Number 5076), the Court is authorized to adjudicate at the first and final instance whose decision has final nature to review the Law against the 1945 Constitution;

[3.2] Considering whereas because the petition of the Petitioners is a petition to review the constitutionality of the Law *in casu* Article 9; Article 11; Article 12; Article 13; Article 14 paragraph (1), paragraph (2), paragraph (3), and paragraph (4); Article 15; Article 16 paragraph (1) and paragraph (2); Article 17 paragraph (1), paragraph (2), and paragraph (3); Article 21; Article 27 paragraph (1) and paragraph (2); Article 28 paragraph (1) and paragraph (2); Article 251 paragraph (2), paragraph (3), and paragraph (8) and paragraph (4) along the phrase "... *cancellation of regency/city regulation and regent/mayor regulation as referred to in paragraph (2) shall be determined by the governor's decision as representative of the Central Government*" the Law Number 23 of 2014 regarding Regional Government (State Gazette of the Republic of Indonesia Number 244 of 2014 and Supplement to the State Gazette of the Republic of Indonesia Number 5587, hereinafter referred to as the Local Government Law) of the 1945 Constitution, then the Court has the authority to adjudicate the petition of the Petitioners;

Legal Standing of the Petitioners

[3.3] Considering whereas based on Article 51 paragraph (1) of the Constitutional Court Law along with its Elucidation, those entitled to submit a petition to review the Law against the 1945 Constitution are those having assumed that their

constitutional rights and/or authorities granted by the 1945 Constitution have been harmed by the applicability of a Law, namely:

a. individual of Indonesian citizen (including group of people having the same interest);
b. customary law community unit as long as it is still alive and in accordance with the development of the community and the principles of the Unitary State of the Republic of Indonesia regulated in the Law;
c. public or private legal entity;
d. state institution;

Therefore, The Petitioner in reviewing the Law against the 1945 Constitution shall explain and prove it first:

a. the position as the Petitioners as referred to in Article 51 paragraph (1) of the Constitutional Court Law;
b. the constitutional rights and/or authorities granted by the 1945 Constitution resulting from the coming into effect of the Law petitioned for review;

[3.4] Considering whereas the Court as of the Decision of the Constitutional Court Number 006/PUU-III/2005 dated May 31, 2005 and the Decision of the Constitutional Court Number 11/PUU-V/2007 dated September 20, 2007, as well as further decisions, is of the opinion that the loss of constitutional rights and/or authorities as mentioned in Article 51

paragraph (1) of the Constitutional Court Law shall comply with 5 (five) requirements, namely:

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

[3.5] Considering whereas based on the elucidation as referred to in paragraph **[3.3]** and **[3.4]**, furthermore the Court will consider the legal standing the Petitioners as follows:

1. Whereas the Petitioners postulate that they have constitutional rights as stipulated in the 1945 Constitution, specifically the rights to implement, maintain, guard, and implement regional autonomy as well as the right to develop regions with their diversity and

peculiarities [vide Article 18 and Article 18A of the Constitution 1945], the right collectively to build society, nation, and country [vide Article 28C paragraph (2) of the 1945 Constitution], and the right to obtain fair legal certainty [Article 28D paragraph (1) of the 1945 Constitution], according to the Petitioners, the constitutional rights have been violated by the enactment of Article 9; Article 11; Article 12; Article 13; Article 14 paragraph (1), paragraph (2), paragraph (3), and paragraph (4); Article 15; Article 16 paragraph (1) and paragraph (2); Article 17 paragraph (1), paragraph (2), and paragraph (3); Article 21; Article 27 paragraph (1) and paragraph (2); Article 28 paragraph (1) and paragraph (2); Article 251 paragraph (2), paragraph (3), and paragraph (8) and paragraph (4) along the phrase "... *cancellation of regency/city regulation and regent/mayor regulation as referred to in paragraph (2) shall be determined by the governor's decision. as representative of the Central Government*" the Regional Government Law;

2. Whereas the Petitioner I [the Association of Indonesian District Governments (APKASI), in this case is represented by Mardani H. Maming, S.H., M.Sos. as Chairman and Prof. Dr. Ir. H. Nurdin Abdullah, M.Agr as Secretary General] postulated that the only association of Regents as regional head of regencies in Indonesia is

a legal entity, which in its articles of association states that the Association of Indonesian District Governments (APKASI) has the main duty to facilitate the implementation of regional autonomy and has the function of being a facilitator in fighting for the interests and aspirations of the region to the government;

3. Whereas the Petitioner II, the Petitioner XIII, the Petitioner XIV, and Petitioner XXX postulate as Regional Government consisting of the Regent and the chairman of the Regional House of People's Representatives (DPRD) as an integrated element of the implementation of regional government affairs attached to the authority of the regional government;
4. Whereas the Petitioner III to the Petitioner XII, the Petitioner XV to the Petitioner XXIX, and the Petitioner XXXI to the Petitioner XLVI postulate as regional government in this case represented by the Regent/Deputy Regent/Acting Regent/On Duty Regent as an element of regional government administration which according to the applicable laws and regulations has the duty and authority to represent the region inside and outside the court and can appoint their attorney to represent them;
5. Whereas the Petitioner XLVII postulate as individual of Indonesian citizen that is same as the Petitioner I has

the duty and function of fighting for and controlling the regional autonomy;

[3.6] Considering, based on the entire elucidation in the paragraph **[3.5]**, furthermore the Court considers the legal standing of the Petitioners as follows:

a. based on Decision Number **47/PUU-X/2012** regarding the petition for reviewing of the Law Number 54 of 1999 regarding the Establishment of Sarolangun Regency, Tebo Regency, Muaro Jambi Regency, and East Tanjung Jabung Regency, dated **February 21, 2013**, the Court is of the opinion:

*"**[3.13]** Considering whereas besides that, because that is stipulated in the article petitioned for the constitutionality review by the Petitioners (**Individual of Indonesian Citizens**) is a matter of regional boundaries that is closely related to regional interests, especially concerning Original Local Government Revenue (Pendapatan Asli Daerah, PAD), then based on the provisions of Article 25 letter f of the Law Number 32 of 2004 regarding Regional Government as last amended by the Law Number 12 of 2008 regarding the Second Amendment to the Law Number 32 of 2004 regarding Regional Government (State Gazette of the Republic of Indonesia Number 59 of 2008, Supplement to the State Gazette of the Republic of Indonesia Number 4844), which states "The Regional Head*

has duties and authorities: .... f. represent their area inside and outside the court, and can appoint a legal representative to represent it in accordance with the laws and regulations", the Petitioners do not have legal standing for two reasons, namely: firstly, insofar as it relates to PAD, the Petitioners do not experience the constitutional impairment as considered above, and; secondly, insofar as it relates to the right to represent regional interests, the Petitioners are not regional heads and do not obtain legal attorney from the relevant regional head;"

b. then, based on Decision Number **70/PUU-XII/2014** regarding petition for reviewing the Law Number 41 of 1999 regarding Forestry as amended by the Law Number 19 of 2004 regarding Establishment of Government Regulation in Lieu of the Law Number 1 of 2004 regarding Amendment to the Law Number 41 of 1999 regarding Forestry Becomes a Law, dated **November 6, 2014**, the Court is of the opinion that although until now the authority of regional heads to represent their regions inside and outside the court is still valid and even though the Petitioners (APKASI) as the organization of the regional head (regent) represents the interests of the regional government in relation to the authority of the regional government, but according to the Court to submit a petition for judicial

review of the law representing the regional interests before the Court shall be regional government consisting of the regent and Chairman of the Regional House of People's Representatives (DPRD).

c. lastly, based on Decision Number **87/PUU-XIII/2015** regarding petition for reviewing the Regional Government Law, dated **October 13, 2016**, the Court is of the opinion that *"...if with regard to governmental affairs carried out by regional government there are parties who actually or potentially consider their constitutional rights and/or authorities impaired by the enactment of the Regional Government Law, the said party shall be the Regional Government, both the Provincial Government or the Regency/City Government. Therefore, the party that can submit an petition under such conditions is the Regional Head together with the Regional House of People's Representatives, namely the Governor together with the Regional House of People's Representatives (DPRD) of Province for Provincial Government or Regent/Mayor together with the Regional House of People's Representatives (DPRD of Regency/City for Regency/City Government.* "Furthermore, the Court is of the opinion that" *... does not mean that the regional head (governor or regent/mayor) or the Regional House of People's Representatives (DPRD) (provincial DPRD or regency/city*

DPRD) individually cannot submit petition for revieiwng of the Regional Government Law. The regional head (governor or regent/mayor) or the Regional House of People's Representatives (DPRD) (provincial DPRD or regency/city DPRD) individually can still submit petition for reviewing of the Regional Government Law as long as the provisions in question constitutionality are provisions relating to their respective rights and/or authorities outside the authority held jointly as the administrator of regional government".

d. whereas subject matter of the petition of the Petitioners as such (*a quo*) is regarding the constitutionality review of the following provisions:

1. classification of government affairs, concurrent government affairs, and administration of Government Affairs in the sector of forestry, marine and energy and mineral resources as well as provincial authority in the management of natural resources at sea as determined in Article 9; Article 11; Article 12; Article 13; Article 14 paragraph (1), paragraph (2), paragraph (3), and paragraph (4); Article 15; Article 16 paragraph (1) and paragraph (2); Article 17 paragraph (1), paragraph (2), and paragraph (3); Article 21; Article 27 paragraph (1) and paragraph

(2); Article 28 paragraph (1) and paragraph (2) of the Regional Government Law;

2. authority to revoke Regional Regulation (Perda) and Regional Head Regulation (Perkada) by the governor and the mechanism for submitting objections to their cancellation to the Ministry as determined in Article 251 paragraph (2), paragraph (3), and paragraph (8) and paragraph (4) as long as the phrase "... *cancellation of Regency/City Regulation and regent/mayor regulation as referred to in paragraph (2) shall be determined by the governor's decision as representative of the Central Government*" the Regional Government Law;

e. whereas Article 9; Article 11; Article 12; Article 13; Article 14 paragraph (1), paragraph (2), paragraph (3), and paragraph (4); Article 15; Article 16 paragraph (1) and paragraph (2); Article 17 paragraph (1), paragraph (2), and paragraph (3); Article 21; Article 27 paragraph (1) and paragraph (2); Article 28 paragraph (1) and paragraph (2) of the Regional Government Law are related to regional government affairs which are jointly held by the regional head and the Regional House of People's Representatives (DPRD), so that those who can submit petition for the intended review are the regional head together with the Regional House of People's

Representatives (DPRD), namely the Petitioner II, the Petitioner XIII, the Petitioner XIV, and the Petitioner XXX. It also includes the Petitioner VII, the Petitioner XVI, the Petitioner XX, the Petitioner XXV because the four Petitioners referred to although in the identity of the petition only stated that they are the regional government represented by the Regent, but in fact included approval from the chairman of the regency DPRD concerned on the petition for reviewing the Law as such (*a quo*). Therefore, related to the approval of the chairman of the regency DPRD, the Court will further assess whether or not based on the decision of the plenary meeting the Regional House of People's Representatives (DPRD) or not, as follows:

1) whereas although the Petitioner II consists of the Regional Government of Batubara Regency represented by the Regent together with the Regional House of People's Representatives (DPRD) of Batubara Regency represented by Chairman and Deputy Chairman of the Regional House of People's Representatives (DPRD) of Batubara Regency, but the existence of Chairman and Deputy Chairman of the Regional House of People's Representatives (DPRD) of Batubara Regency as the Petitioners are not based on the results of the decision of the plenary meeting of the Regional House

of People's Representatives (DPRD) of Batubara Regency, but the Plenary Chairman of the Regional House of People's Representatives (DPRD) of Batubara Regency [exhibit P-2.G];

2) whereas although the Petitioner VII in the identity of the petition only listed the Regional Government of West Tanjung Jabung Regency represented by the Regent, but evidently there is evidence in the form of Minutes of the Plenary Meeting of West Tanjung Jabung Regency Number 170/804/DPRD/2015 regarding Approval of the Judicial Review of the Law Number 23 of 2014 regarding Regional Government to the Constitutional Court [Exhibit P-7.D and Exhibit P-7.E] and the Chairman of the Regional House of People's Representatives (DPRD) of West Tanjung Jabung Regency has also given the power of attorney to the Legal Team of APKASI to submit the petition as such (*a quo*) together with the Regent of West Tanjung Jabung as the Petitioner;

3) whereas although the Petitioner XIII consists of the Regional Government of Sukabumi City represented by the Mayor together with the Regional House of People's Representatives (DPRD) of Sukabumi City represented by Chairman and Deputy Chairman of the Regional House of People's Representatives (DPRD) of Sukabumi City, there is no evidence that states that Chairman and

Deputy Chairperson of the Regional House of People's Representatives (DPRD) of Sukabumi City as the Petitioner is the result of the plenary session of the Regional House of People's Representatives (DPRD) of Sukabumi City;

4) whereas although the Petitioner XIV consists of the Regional Government of Banjarnegara Regency represented by the Regent together with the Regional House of People's Representatives (DPRD) of Banjarnegara Regency represented by Chairman and Deputy Chairman of the Regional House of People's Representatives (DPRD) of Banjarnegara Regency, but the existence of Chairman and Deputy Chairman of the Regional House of People's Representatives (DPRD) of Banjarnegara Regency as the Petitioner XIV is not based on the result of decision of the Plenary session of the Regional House of People's Representatives (DPRD) of Banjarnegara Regency, but the Chairman Meeting of the Regional House of People's Representatives (DPRD) of Banjarnegara Regency [Exhibit P-14.D and Exhibit P-14.E];

5) whereas even though the Petitioner XVI in the identity of the petition only listed the Regional Government of Kulon Progo Regency represented by the Regent, but evidently there is evidence in the form of Decision of

the People's Representative Council of Kulon Progo Regency Number 23 of 2015 regarding Approval of Petition for Judicial Review on the Law Number 23 of 2014 regarding Regional Government [Exhibit P-16.D] and Minutes of Plenary Meeting Number 62/BA/DPRD/XII/2015 regarding Approval of Judicial Review of the Law Number 23 of 2014 regarding Regional Government to the Constitutional Court [Exhibit P-16 .E]. In connection with this matter, Chairman of the Regional House of People's Representatives (DPRD) of Kulon Progo Regency has also authorized the Legal Team of APKASI to submit the petition as such (*a quo*) together with the Regent of Kulon Progo as the Petitioner;

6) whereas even though the Petitioner XX in the identity of the petition only listed the Regional Government of Kapuas Regency represented by the Regent, but evidently there is evidence in the form of Minutes of Plenary Meeting Number 180/01/DPRD/2016 regarding Approval of Judicial Review of the Law Number 23 of 2014 regarding Regional Government to the Constitutional Court [Exhibit P-20.D and Exhibit P-20.E] and Chairman of the Regional House of People's Representatives (DPRD) of Kapuas Regency has also authorized to the Legal Team of APKASI to submit the

petition as such (*a quo*) together with the Regent of Kapuas as the Petitioner;

7) whereas although the Petitioner XXV in the identity of the petition only listed the Regional Government of Lamandau Regency represented by the Regent, but evidently there is evidence in the form of Minutes of the Plenary Meeting of the Regional House of People's Representatives (DPRD) of Lamandau Regency Number 170/172.1609/DPRD-LMD/XI.2015 regarding Approval of Judicial Review of the Law Number 23 of 2014 regarding Regional Government to the Constitutional Court [Exhibit P-25.D and Exhibit P-25.E] and Chairman of the Regional House of People's Representatives (DPRD) of Lamandau Regency has also authorized the Legal Team of APKASI to submit the petition as such (*a quo*) together with the Regent of Lamandau as the Petitioner;

8) whereas the Petitioner XXX consists of the Regional Government of Kolaka Regency represented by the Regent together with the Regional House of People's Representatives (DPRD) of Kolaka Regency represented by Chairman and Deputy Chairman of the Regional House of People's Representatives (DPRD) of Kolaka Regency. The existence of Chairman and Deputy Chairman of the Regional House of People's Representatives (DPRD) of

Kolaka Regency as the Petitioners has been proven by the Minutes of the Plenary Meeting of the Regional House of People's Representatives (DPRD) of Kolaka Regency Number 170/739/2015 regarding Approval of Judicial Review of the Law Number 23 of 2014 regarding Regional Government to the Constitutional Court [Exhibit P-30. D];

Therefore, against the Petitioner VII, the Petitioner XVI, the Petitioner XX, the Petitioner XXV, and the Petitioner XXX above, the Court considered the said five Petitioners have proved that they could submit petition for reviewing of Article 9; Article 11; Article 12; Article 13; Article 14 paragraph (1), paragraph (2), paragraph (3), and paragraph (4); Article 15; Article 16 paragraph (1) and paragraph (2); Article 17 paragraph (1), paragraph (2), and paragraph (3); Article 21; Article 27 paragraph (1) and paragraph (2); Article 28 paragraph (1) and paragraph (2) of the Regional Government Law. Regardless of whether or not the five Petitioners' arguments are true regarding the constitutionality of the norms of the articles being reviewed, it is clear to the Court that the said five Petitioners have actually explained or at least potential regarding impairment of their constitutional rights, which is causally due to the enactment of the provisions

as such (*a quo*) that is petitioned for reviewing. The constitutional impairment has the possibility that it will not happen again if the Court grants the petition as such (*a quo*);

f. whereas Article 251 paragraph (2), paragraph (3), and paragraph (8) and paragraph (4) along the phrase "... *cancellation of Regency/City Regulation and regent/mayor regulation as referred to in paragraph (2) shall be determined by the governor's decision as representative of the Central Government"* the Law 23/2014 regarding the authority respectively held by the Regional House of People's Representatives (DPRD) and the regional head as the regional government administrator separately, so that the regional head or the Regional House of People's Representatives (DPRD) can submit review of the said provisions to the Court individually or jointly. However, among the Petitioners there are regency governments not represented by the regents, namely the Petitioner VIII, the Petitioner XVIII, the Petitioner XIX, the Petitioner XXI, the Petitioner XXIII, the Petitioner XXIV, the Petitioner XXIV, the Petitioner XXXVI, the Petitioner XL to the Petitioner XLVI. Article 65 paragraph (1) letter e of the Regional Government Law states that only the regional head has the duty to represent his area inside and outside the court and can appoint legal attorney to

represent him. Therefore, the aforementioned Petitioners do not have legal standing to submit petition for reviewing Article 251 paragraph (2), paragraph (3), and paragraph (8) and paragraph (4) along the phrase "... *cancellation of Regency/City Regulation and regent/mayor regulation as referred to in paragraph (2) shall be determined by the governor's decision as representative of the Central Government*" the Regional Government Law. Conversely or in other words, the Petitioner II to the Petitioner VII, the Petitioner IX to the Petitioner XVII, the Petitioner XX, the Petitioner XXII, the Petitioner XXV to the Petitioner XXXV, and the Petitioner XXXVII to the Petitioner XXXIX have legal standing to submit petition for reviwing of the articles referred to. Regardless of whether it is true or not the Petitioners' arguments regarding the unconstitutionality of the norms of the articles referred to, it is clear to the Court that the Petitioners have actually explained or at least potential regarding impairment of their constitutional rights, which is causally due to the enactment of the provisions as such (*a quo*) petitioned for reviewing. The constitutional impairment has the possibility that it will not happen again if the Court grants the petition as such (*a quo*);

g. whereas because the articles reviewed with respect to regional government affairs are jointly held by the regional head and the regional house of people's representatives, as elucidated in letter e, and with respect to the authority respectively is held by the Regional House of People's Representatives (DPRD) and the regional head as regional government administrators that can be carried out individually, as elucidated in letter f, so that according to the Court, the Petitioner I and XLVII do not have legal standing to submit the petition as such (*a quo*);

h. Whereas based on the above considerations, the Petitioner VII, the Petitioner XVI, the Petitioner XX, the Petitioner XXV, and the Petitioner XXX have the legal standing to submit petition as long as regarding the reviewing Article 9; Article 11; Article 12; Article 13; Article 14 paragraph (1), paragraph (2), paragraph (3), and paragraph (4); Article 15; Article 16 paragraph (1) and paragraph (2); Article 17 paragraph (1), paragraph (2), and paragraph (3); Article 21; Article 27 paragraph (1) and paragraph (2); Article 28 paragraph (1) and paragraph (2) of the Regional Government Law. As for the petition as long as regarding the reviewing Article 251 paragraph (2), paragraph (3), and paragraph (8) and paragraph (4) along the phrase "... *cancellation of*

Regency/City Regulation and regent/mayor regulation as referred to in paragraph (2) shall be determined by the governor's decision as representative of the Central Government" the Regional Government Law, the Petitioner II to the Petitioner VII, the Petitioner IX to the Petitioner XVII, the Petitioner XX, the Petitioner XXII, the Petitioner XXV to the Petitioner XXXV, and the Petitioner XXXVII to the Petitioner XXXIX have legal standing to submit the petition;

[3.7] Considering whereas because the Court has the authority to adjudicate the petition as such (*a quo*), and the Petitioner VII, the Petitioner XVI, the Petitioner XX, the Petitioner XXV, and the Petitioner XXX have legal standing to submit the petition for reviewing Article 9; Article 11; Article 12; Article 13; Article 14 paragraph (1), paragraph (2), paragraph (3), and paragraph (4); Article 15; Article 16 paragraph (1) and paragraph (2); Article 17 paragraph (1), paragraph (2), and paragraph (3); Article 21; Article 27 paragraph (1) and paragraph (2); Article 28 paragraph (1) and paragraph (2) of the Regional Government Law and the Petitioner II to the Petitioner VII, the Petitioner IX to the Petitioner XVII, the Petitioner XX, the Petitioner XXII, the Petitioner XXV to the Petitioner XXXV, and the Petitioner XXXVII to the Petitioner XXXIX have legal standing to submit the petition for revieiwng Article 251 paragraph (2),

paragraph (3), and paragraph (8) and paragraph (4) along the phrase "... *cancellation of Regency/City Regulation and regent/mayor regulation as referred to in paragraph (2) shall be determined by the governor's decision as representative of the Central Government*" the Regional Government Law, then the Court will consider the subject matter of the petition;

Subject Matter of the Petition

[3.8] Considering whereas the Petitioner VII, the Petitioner XVI, the Petitioner XX, the Petitioner XXV, and the Petitioner XXX postulate Article 9; Article 11; Article 12; Article 13; Article 14 paragraph (1), paragraph (2), paragraph (3), and paragraph (4); Article 15; Article 16 paragraph (1) and paragraph (2); Article 17 paragraph (1), paragraph (2), and paragraph (3); Article 21; Article 27 paragraph (1) and paragraph (2); Article 28 paragraph (1) and paragraph (2) of the Regional Government Law and the Petitioner II to the Petitioner VII, the Petitioner IX to the Petitioner XVII, the Petitioner XX, the Petitioner XXII, the Petitioner XXV to the Petitioner XXXV, and the Petitioner XXXVII to the Petitioner XXXIX postulate Article 251 paragraph (2), paragraph (3), and paragraph (8) and paragraph (4) along the phrase "... *cancellation of Regency/City Regulation and regent/mayor regulation as referred to in paragraph (2) shall be determined by the governor's decision as representative of the Central Government"* The Regional

Government Law is contradictory to Article 18, Article 18A, Article 24A paragraph (1), Article 28C paragraph (2), and Article 28D paragraph (1) of the 1945 Constitution, with reasons as follows:

1. Whereas the arrangement for the division of classification of governmental affairs in Article 9; Article 11; Article 12; Article 13; Article 14 paragraph (1), paragraph (2), paragraph (3), and paragraph (4); Article 15; Article 16 paragraph (1) and paragraph (2); Article 17 paragraph (1), paragraph (2), and paragraph (3); Article 21; Article 27 paragraph (1) and paragraph (2); and Article 28 paragraph (1) and paragraph (2) of the Regional Government Law are a form of centralization of power, limitation on the authority of regency/city government, and fictitious autonomy model, therefore contradicting Article 18 paragraph (1) of the 1945 Constitution which states the Unitary State of the Republic of Indonesia divided into (not consisting of) regions of the Province and Regency/City, Article 18 paragraph (2) of the 1945 Constitution, and the residual theory as adopted in Article 18 paragraph (5), Article 18 paragraph (6), and Article 18A paragraph (1) of the 1945 Constitution;
2. Whereas the articles reviewed in the Regional Government Law castrate the rights of the Petitioners who have the mandate to run the regional government, to develop, and to

improve the welfare of their regional communities based on the principle of the broadest regional autonomy, so that it has implication for the sources of income and finance of each region;

3. Whereas by not involving the regency/city government in the management of natural and mineral resources in their own regions as specified in Article 14 paragraph (1), paragraph (2), paragraph (3); Article 27 paragraph (1) and paragraph (2); and Article 28 paragraph (1) and paragraph (2) of the Regional Government Law causes injustice and disharmony, thus contradicting Article 18 paragraph (2) of the 1945 Constitution which emphasizes the management of the field based on the principles of justice and harmony;
4. Whereas the mechanism for revoking Regional Regulation and Regional Head Regulation determined by the Regional Government Law through the governor as well as submitting objections to their cancellation to the Ministry in addition to creating legal uncertainty also contradicts the division of trias politica because the right to make legislative products by the regional government granted by Article 18 paragraph (6) The 1945 Constitution can only be canceled by the judiciary institution given the authority to cancel it, namely the Supreme Court [vide Article 24A paragraph (1) of the 1945 Constitution];

[3.9] Considering whereas in order to strengthen their argument, the Petitioners have submitted letter/written evidence marked with P-1.A to P-35.C, 4 (four) witnesses, and 4 (four) experts, each of whom has been heard their testimony in court (as contained completely in the part of Facts of the Case). The Petitioners also submitted their conclusion received at the Registrar's Office of the Court on May 4, 2016.

[3.10] Considering whereas the President gave a testimony in the hearing on March 21, 2016 (as contained completely in the part of Facts of the Case).

[3.11] Considering whereas the Regional House of Representatives (DPD) has given testimony in the hearing on April 14, 2016 (as contained completely in the part of Facts of the Case).

[3.12] Considering whereas after closely examining the Petitioners' arguments, letter/written evidence, testimony of experts and witnesses of the Petitioners, the Petitioners' conclusion, testimony of the Government, and testimony of the Regional Representative Council (DPD), the Court considered as follows:

[3.12.1] Whereas related to the constitutionality of the classification of governmental affairs and concurrent governmental affairs in the Regional Government Law, the

Court has decided with the Constitutional Court Decision Number **87/PUU-XIII/2015** regarding petition for reviewing of the Regional Government Law, dated **October 13, 2016**, with legal considerations as follows:

> ***[3.11.2]*** *Whereas what shall be further considered by the Court is who is meant by "state" as elucidated in sub-paragraph* ***[3.11.1]*** *above? It has become common knowledge that doctrinally the state is a political conception of social organization which is at the same time a power organization whose elements consist of: (1) the existence of a territory, (2) the existence of inhabitants who inhabit the region, and (3) the existence of a government that sovereign who effectively controls the territory and population concerned. In the context of state administration, the element of government plays an important role because it is the government that carries out daily administration and acts for and on behalf of the Republic of Indonesia, as affirmed in Article 1 paragraph (1) of the 1945 Constitution, is a unitary state. The holder of government power in the Unitary State of the Republic of Indonesia, according to Article 4 paragraph (1) of the 1945 Constitution, is the President. Thus, in essence the responsibility for the government administration in Indonesia is in the*

hands of the President. Therefore it is appropriate when Article 6 of the Regional Government Law confirms that the Central Government stipulates policies as the basis for carrying out Government Affairs and in Article 7 paragraph (2) of the Regional Government Law it is emphasized that the President holds final responsibility for the administration of Government Affairs carried out by the Central and Regional Governments. Meanwhile, Government Affairs are given the meaning of government power which becomes the authority of the President whose implementation is carried out by the ministries and regional government administrators to protect, serve, empower, and improve the welfare of the community (vide Article 1 number 5 of the Regional Government Law).

[3.11.3] *Whereas therefore, Article 18 paragraph (1) of the 1945 Constitution states that the Unitary State of the Republic of Indonesia is divided into provincial regions and the province is divided into regencies and cities, which each province, regency and city has regional government, which is regulated by law. Then, in Article 18 paragraph (2) of the 1945 Constitution, it is said that the provincial, regency, and city governments regulate the government affairs according to the principle of autonomy and co-administration*

task. Furthermore, in Article 18 Paragraph (5) of the 1945 Constitution affirms that the regional government exercises the broadest autonomy, except the affairs determined by law to be the Central Government affairs. Based on the elucidation above, even though the last person in charge of the day-to-day administration of Indonesia is in the hands of the President (the Central Government), even the regional governments (both provincial, regency and city governments) have responsibilities in the administration of government as long as those included in the scope of its autonomy in the regional government system stipulated in the law. Thus, the local governments within their autonomy are acting for and on behalf of the state. Therefore, if the Law, within certain limits, also gives the region the authority to carry out affairs relating to the lives of many people, this does not contradict the 1945 Constitution, especially Article 33 paragraph (2). It is entirely policy of legislators. And vice versa, if the legislators are of the opinion that if such affairs are more appropriate if submitted to the Central Government, It is also entirely the policy of legislators.

[3.11.4] *Whereas, in relation to the petition as such (a quo), with regard to the grouping of Government*

Affairs, Article 9 of the Regional Government Law reads:

(1) The Government Affairs consist of absolute government affairs, concurrent government affairs, and general government affairs;

(2) The absolute government affairs as referred to in paragraph (1) are Government Affairs which are fully the authority of the Central Government;

(3) The concurrent governmental affairs as referred to in paragraph (1) are Government Affairs that are divided between the Central Government and the provincial and regency/city regions;

(4) The concurrent governmental affairs submitted to the Region become the basis for the implementation of Regional Autonomy;

(5) The General government affairs as referred to in paragraph (1) are Government Affairs which become the authority of the President as the head of government.

Then, in Article 10 paragraph (1) of the Regional Government Law it is said that the absolute government affairs include: foreign policy, defense, security, justisi, national monetary and fiscal, and religion.

[3.11.5] *Whereas based on the elucidation in sub-paragraph* ***[3.11.4]*** *above, it is clear that what has*

become the implementation of Regional Autonomy is the concurrent governmental affairs submitted to the Regions, in other words, the governmental affairs which are not absolute governmental affairs and general governmental affairs. Meanwhile, the concurrent government affairs which are the regional authority are regrouped into Mandatory Government Affairs and Selection of Government Affairs, where the Mandatory Government Affairs consist of Government Affairs relating to Basic Services and Government Affairs which are not related to Basic Services [vide Article 11 paragraph (1) and paragraph (2) of the Regional Government Law]. The Mandatory Government Affairs relating to Basic Services include:

a. education;

b. health;

c. public works and spatial planning;

d. public housing and residential areas;

e. peace, public order and community protection; and

f. social.

While the Mandatory Government Affairs not related to Basic Services include:

a. labor;

b. women's empowerment and child protection;

c. food;

d. land;

e. living environment;

f. population administration and civil registration;

g. community and village empowerment;

h. population control and family planning;

i. transportation;

j. communication and informatics;

k. cooperatives, small and medium businesses;

l. capital investment;

m. youth and sports;

n. statistics;

o. coding;

p. culture;

q. library; and

r. record management.

Meanwhile, the Selection of Government Affairs include:

a. marine and fishery;

b. tourism;

c. agriculture;

d. forestry;

e. energy and Mineral Resources;

f. trading;

g. industry; and

h. transmigration.

[vide Article 12 of the Regional Government Law].

Thus, electricity is classified as the Selection of Government Affairs which is given by the Law as such (a quo) as the Government Affairs that shall be implemented by the Region in accordance with potential owned by the Region (vide Article 1 number 15 of the Regional Government Law). The area referred to herein may mean the provincial Region or Regency/City Region.

[3.11.6] *Whereas, based on the elucidation in sub-paragraph* ***[3.11.5]*** *above, the question is what is used as the basis for consideration that the concurrent governmental affairs will be given to the Regional Government (either provincial or regency/city) or will still be held by the Central government? Regarding this question, the Regional Government Law states that the principles that are used as the basis are the principles of accountability, efficiency, externality, and national strategic interests. As for what is meant by:*

a. *"the principle of accountability" means that the person responsible for administering a Government Affair is determined based on its proximity to the extent, magnitude and extent of the impact caused by the administration of a Government Affair;*
b. *"the principle of efficiency" means the administration of a Government Affair determined*

based on the highest comparative level of efficiency that can be obtained;

c. *"the principle of externality" means the administration of a Government Affair based on the area, magnitude and extent of the impacts caused by the administration of a Government Affair;*

d. *the principle of "national strategic interest" is the administration of a Government Affair determined based on considerations in order to maintaining the integrity and unity of the nation, safeguarding the sovereignty of the State, implementing foreign relation, achieving national strategic program and other considerations stipulated in the provisions of the laws and regulations.*

[vide Article 13 paragraph (1) juncto Elucidation of Article 13 paragraph (1) of the Regional Government Law].

On this basis, the criteria for Government Affairs which are the authority of the Central Government are determined, the Government Affairs which are the provincial authority, and the Government Affairs which are the regency/city authority are as follows:

The Government Affairs which are the authority of the Central Government are:

a. *The government affairs whose location is across provincial or cross-border;*
b. *The government affairs whose users are cross provincial or cross-country;*
c. *The government affairs whose benefits or negative impacts are cross provincial or cross-country;*
d. *The government affairs which the use of resources is more efficiently if carried out by the Central Government; and/or*
e. *The government affairs whose roles are strategic for the national interest.*

Meanwhile, the Government Affairs which are the provincial authority are:

a. *The government affairs whose location is cross regency/city region;*
b. *The government affairs whose users are cross regency/city region;*
c. *The government affairs whose benefits or negative impacts are cross regency/city region; and/or*
d. *The government affairs which the use of resources is more efficiently if carried out by the Provincial Region.*

The Governmental Affairs which are the regency/city authority are:

a. *The government affairs whose location is in regency/city region;*
b. *The government affairs whose users are in regency/city region;*
c. *The government affairs whose benefits or negative impacts are only in regency/city region; and/or*
d. *The government affairs which the use of resources is more efficiently if carried out by the regency/city Region.*

[vide Article 13 of the Regional Government Law]

[3.11.7] *Whereas based on all of the above considerations, seen from the perspective of government administration, placing electricity as a sub- affair of selection concurrent government whose authority is divided between the Central Government and the provincial region based on the principle of accountability, efficiency, externality, and national strategic interests does not conflict with the 1945 Constitution. However, the problem then is that at the time the enactment of this Regional Government Law also applies the Law Number 30 of 2009 regarding Electricity (State Gazette of 2009 Number 133, Supplement to the State Gazette of the Republic of Indonesia Number 5052, hereinafter referred to as the Electricity Law). Article 5 of the Electricity Law states:*

(1) The authority of the Government in the electricity sector includes:

a. stipulation of national electricity policy;

b. stipulation of laws and regulations in the electricity sector;

c. stipulation of guidelines, standards and criteria in the electricity sector;

d. stipulation of guidelines for determining electricity tariffs for consumers;

e. stipulation of the national electricity general plan;

f. stipulation of business area;

g. stipulation of licenses to buy and sell electricity cross countries;

h. stipulation of business licenses for supplying electricity to business entities that are:

1. the business area is across provinces;

2. conducted by state-owned enterprise; and

3. selling electricity and/or renting electricity networks to holders of electricity supply business licenses stipulated by the Government;

i. stipulation of operating permit for the installation facilities covering cross provinces;

j. stipulation of electricity tariffs for consumers from holders of electricity supply business licenses stipulated by the Government;

k. stipulation of approval of electricity selling price and electricity network rental from holders of electricity supply business license stipulated by the Government;

l. stipulation of approval for sale of excess electricity from holders of operating permit stipulated by the Government;

m. stipulation of electricity support service business licenses conducted by state-owned enterprises or foreign investors/majority of shares owned by foreign investors;

n. stipulation of licenses for utilization of electric power networks for the purposes of telecommunication, multimedia and informatics on networks owned by holders of electricity supply business licenses or operating permit stipulated by the Government;

o. guidance and supervision to business entities in the electricity sector whose licenses stipulated by the Government;

p. appointment of electricity inspector;

q. development of functional position of electricity inspector for all levels of government; and

r. stipulation of administrative sanction for business entities whose licenses are stipulated by the Government.

(2) The authority of the provincial government in the electricity sector includes:

a. stipulation of provincial regulation in the electricity sector;

b. stipulation of the general plan for electricity in the provincial region;

c. stipulation of business licenses for supplying electricity to business entities whose business areas are cross regency/city;

d. stipulation of operating permit for the installation facilities covering cross regency/city;

e. stipulation of electricity tariffs for consumers from holders of electricity supply business licenses stipulated by the provincial government;

f. stipulation of approval of electricity selling price and electricity network rental for business entities that sell electricity and/or lease

electricity network to business entities whose licenses stipulated by the provincial government;

g. stipulation of approval for sale of excess electricity from holders of operating permit whose licenses stipulated by the provincial government

h. stipulation of licenses for utilization of electricity networks for the purposes of telecommunication, multimedia and informatics on networks owned by holders of electricity supply business licenses or operating permit stipulated by the provincial government;

i. guidance and supervision to business entities in the electricity sector whose licenses stipulated by the provincial government;

j. appointment of electricity inspector for the province; and

k. stipulation of administrative sanction for business entities whose licenses are stipulated by the provincial government.

(3) The authority of regency/city government in the electricity sector includes:

a. stipulation of regency/city regulation in the electricity sector;

b. stipulation of regency/city electricity general plan;

c. stipulation of business licenses for supplying electricity to business entities whose business areas are in regency/city;

d. stipulation of operating permit for the installation facilities in regency/city;

e. stipulation of electricity tariffs for consumers from holders of electricity supply business licenses stipulated by the regency/city government;

f. stipulation of approval of electricity selling price and electricity network rental for business entities that sell electricity and/or lease electricity networks to business entities whose licenses stipulated by the regency/city government;

g. stipulation of electricity support service business licenses for business entities whose majority shares owned by domestic investors;

h. stipulation of approval for the sale of excess electricity from holders of operating permit whose license determined by the regency/city government;

i. stipulation of licenses for utilization of electricity networks for the purposes of telecommunication, multimedia and informatics on networks owned by holders of electricity supply

business licenses or operating permit stipulated by the regency/city government;

j. guidance and supervision for business entities in the electricity sector whose licenses stipulated by the regency/city government;

k. appointment of electricity inspector for regency/city; and

l. stipulation of administrative sanction for business entities whose licenses stipulated by the regency/city government.

With the above conditions, it seems as if two provisions of the Law apply to both the Government (Central) and the Region in which the arrangement of the two Laws are different so that, in the context of the authority between the Government (Central) and the Region, the question arises which Law is applicable? Regarding this question, the Court has opinion as follows:

a. *Chapter XXVII (Closing Provisions), Article 407 of the Regional Government Law states, "When this Law comes into force, all laws and regulations that relate directly to the Region shall base and adjust their arrangement in this Law";*

b. *If the provisions of Article 407 of the above Regional Government Law are related to the*

provisions of Article 7 of the Law Number 12 of 2011 regarding Formation of Laws and Regulation, the provisions in Article 407 of the above Regional Government Law also apply to the Electricity Law, in this case, Article 5 of the Electricity Law, to the extent concerning the authority that is directly related to the Region, both the Provincial and the Regency/City Region, so it shall base and adjust its regulation to the Regional Government Law. The provisions of Article 407 of the Regional Government Law also apply to all laws and regulations under the Law. This is in line with the legal principle of lex posteriore derogat legi priori (the regulation that was born later takes precedence/overcomes the previous equivalent) and the legal principle of lex superiore derogat legi inferiori (higher regulation takes precedence/overcomes lower regulation).

[3.12.2] Whereas due to the review of the constitutionality of the provisions concerning the classification of government affairs and concurrent government affairs in the Regional Government Law, the Court has considered the Constitutional Court Decision Number 87/PUU-XIII/2015 dated October 13, 2016, the consideration of the aforesaid decision mutatis mutandis (having changed what needs to be changed) applies to the argument the Petitioners as such (*a quo*). Likewise for

the constitutionality review of the provisions concerning the administration of Government Affairs in the sector of forestry, marine and energy and mineral resources as well as the authority of provincial Region in managing natural resources at sea is selection of government affairs, so that it is substantially the same as the provisions concerning electricity in the regional Government Law which also has been considered by the Court in the Constitutional Court Decision Number 87/PUU-XIII/2015 dated October 13, 2016, therefore the consideration of the aforementioned decision also mutatis mutandis applies to the argument of the Petitioners as such (*a quo*).

Based on the above considerations, the argument of the Petitioner VII, the Petitioner XVI, the Petitioner XX, the Petitioner XXV, and the Petitioner XXX on the constitutionality review of the classification of government affairs as referred to in Article 9 and concurrent governmental affairs as referred to in Article 11, Article 12, and Article 13, Article 15, Article 16 paragraph (1) and paragraph (2), Article 17 paragraph (1), paragraph (2), and paragraph (3), and Article 21 of the Regional Government Law and the constitutionality review of the administration of Government Affairs in the sector of forestry, marine, and energy and mineral resources as referred to in Article 14 paragraph (1), paragraph (2), paragraph (3), and paragraph

(4) as well as the provincial authoritiy in the management of natural resources at sea as referred to in Article 27 paragraph (1) and Paragraph (2) and Article 28 Paragraph (1) and Paragraph (2) of the Regional Government Law, not reasoned according to law;

[3.12.3] Whereas before the Court further considers the constitutionality review of Article 251 paragraph (2), paragraph (3), paragraph (4) and paragraph (8) of the Regional Government Law related to cancellation of Regency/City Regulation and regent/mayor regulation and objection mechanism for their cancellation, The Court will first consider several constitutional principles, among others, the principle of the Unitary State of the Republic of Indonesia (NKRI), the principle of regional autonomy and decentralization, as well as the principle of judicial power and rule of law, as follows:

The Principle of the Unitary State of the Republic of Indonesia (NKRI)

NKRI, with the motto "Unity in Diversity (*Bhinneka Tunggal Ika*)" in the symbol of the state of Garuda Pancasila is a portrait of Indonesia as a nation state. The meaning of the motto is in understanding nationality as "unity in difference and difference in unity". This implies that although each region or area has different characteristics both in terms of ethnicity, culture, religion, economic

potential and so on, but it is an integral part of the Republic of Indonesia, so it has the same right to obtain or create development progress and welfare of its people.

The formation of the Indonesian state was the result of a compromise which later became a national agreement. One of the national agreements is to maintain the principle of the Unitary State of the Republic of Indonesia in the form of a republic as a form of state as affirmed in Article 1 paragraph (1) of the 1945 Constitution. The principles of the Unitary State of the Republic of Indonesia are contained five times in the 1945 Constitution, namely Article 1 paragraph (1), Article 18, Article 18B paragraph (2), Article 25A, and Article 37 paragraph (5) of the 1945 Constitution.

Article 1 paragraph (1) of the 1945 Constitution confirms, "*The State of Indonesia is a Unitary State, in the form of a Republic*", and it has also been emphasized that the only article that shall not be amended is an article regarding the Unitary State of the Republic of Indonesia which is further reiterated in Article 37 paragraph (5) of the 1945 Constitution, that the form of a unitary state cannot be changed. So as far as concerning with the form of the state, constitutionally it has been a final political decision.

The Principles of Regional Autonomy and Decentralization

Chapter VI Article 18 paragraph (1) of the 1945 Constitution mandates, "*The Unitary State of the Republic of Indonesia is divided into provincial regions and the provincial region is divided into regencies and cities,* ***each of provinces, regences and cities have regional government,*** *which is regulated by law*". Article 18 paragraph (2) of the 1945 Constitution mandates, "*The provincial, regency and city governments* ***regulate and manage their own government affairs*** *according to the* ***principle of autonomy*** *and co-administration task*" **in order to facilitate services, shorten the distance between the government as a servant and the community as a party served, efficient, effective in the administration of regional government to accelerate the welfare of the community in the area.** Article 18 Paragraph (5) of the 1945 Constitution mandates: "*The Regional government exercises the* ***broadest autonomy,*** *except the governmental affairs determined by law to be the Central Government affairs*".

Whereas the formation of the Constitution has been aware from the beginning, the Unitary State of the Republic of Indonesia which has a very wide area is not possible to be fully implemented by the central government, so that the regional government is needed, namely provincial and regency/city governments. The implementation of government in the region based on the principle of regional autonomy is also intended to safeguard the integrity of the Unitary State

of the Republic of Indonesia. The presence of regions already existed before the Republic of Indonesia was born, their voices in discussing the benefits of government in the regions should not be ruled out. In the New Order era which had a centralistic character, the regional responsibility in developing the region and its weak people, and also the community participation caused by the limited or lack of dignified participation space for them to participate in determining their future. All of them depend on the attention and granting of the central government. Therefore, reform supports the birth of the commitment to the presence of regional autonomy as one of the demands for reform.

The central and regional government is an organizational unit that should run along with mutual respect, mutual support, and mutual strengthening of one another. The central and regional governments shall always do together to formulate solution to the problems faced. It is necessary to refresh the memory that the consensus on regional autonomy is to place the emphasis on regional autonomy with the principle of the broadest autonomy which is realized through granting autonomy both to provinces and to regencies/cities.

Based on the provisions of Article 18 paragraph (2) of the 1945 Constitution, the existence of regional government has constitutional authority to regulate and manage their own

government affairs according to the principle of autonomy. Likewise, the will of the constitution in Article 18 paragraph (5) of the 1945 Constitution to bring the broadest autonomy by giving the broadst space to the regions to regulate and manage their own government affairs is a manifestation of decentralization of democratic governance.

One of the demands of the 1998 reform was the desire to change the centralistic model of governance to be decentralistic. Related to this matter, the People's Consultative Assembly of Indonesian (MPR RI) at that time was the highest state institution issued Decree the People's Consultative Assembly Number XV/MPR/1998 which among others emphasized the implementation of regional autonomy. The implementation of regional autonomy, regulation, division and utilization of national resources and financial balance between the center and the regions during the New Order era had not been carried out proportionally in accordance with the principles of democracy, justice and equity. These things that contributed to the presence of the 1998 reform movement in the hope that significant improvement will occur in the context of central-regional relations.

The granting of the broadest autonomy to the regions is directed at accelerating the realization of people's welfare through service improvement, empowerment, and community participation. In addition, through broad autonomy, in the

strategic environment of globalization, the regions are expected to be able to increase their competitiveness by taking into account the principles of democracy, equity, justice, privileges and specificities as well as potential and diversity of regions in the system of the Unitary State of the Republic of Indonesis (NKRI).

Regarding the decentralization system, the 1945 Constitution has provided constitutional basis for Article 18, Article 18A, and Article 18B of the 1945 Constitution. These articles contain substance concerning:

a. the regions regulate and manage their own government affairs according to the principle of autonomy and co-administration task;
b. the broadest autonomy;
c. recognizing and respecting regional governments that are particular and special;
d. the representative body directly elected in a general election;
e. the central and regional relations shall be carried out in a harmonious and fair manner;
f. the relationship of authority between the central and regional governments shall consider to the regional specificity and diversity;
g. financial relation, public services, utilization of natural resources, and other resources between the central

and regional governments carried out fairly and in accordance with the law;

h. recognition and respect of the state for regional government units that are particular or special in nature; and

i. recognition and respect of the state for the customary law community units and their traditional rights as long as they are still alive and in accordance with the development of the community and the principles of the Unitary State of the Republic of Indonesia;

Decentralization of authority to provincial and regency/city governments is carried out at a significant level. The government provides enormous opportunities for regions to regulate their regions in accordance with the potential and aspiration that develop in these areas, as long as they do not involve matters that are still the authority of the central government. As guidelines or rules at the regional level, the regional governments that have the ability to implement regional autonomy are allowed to regulate their regional affairs in the form of Regional Regulation (Perda), so that the regions are autonomous regions.

An autonomous region as an independent government unit that has attributive authority, especially as subject of public law (*publiek rechtspersoon, public legal entity*), has

the authority to make regulations to run its household. The authority to regulate is on the Regional Government (state administration official) and the Regional House of People's Representatives (DPRD) as the holder of the legislative function in the regions. The legal product in the form of part of the laws and regulations that is born is Regional Regulation (Perda with the scope of authority to regulate household affairs in the field of autonomy, household affairs in the field of co-administration task, and further elucidation of higher laws and regulations in the field of autonomy). The Regional regulation can regulate all government affairs and community interests that are not regulated by the center.

On August 18, 2000, the People's Consultative Assembly (MPR) through the Annual Session agreed to amend the second phase of the 1945 Constitution by amending and/or adding, among others Chapter VI regarding Regional Government, namely Article 18, Article 18A, and Article 18B of the 1945 Constitution. The provisions of Article 18 of the 1945 Constitution were amended and added it reads as follows:

(1) *The Unitary State of the Republic of Indonesia is divided into provinces and the province is divided into regencies and cities, each of them has regional government, which is regulated by law.*

(2) Provincial, regency, and city governments regulate and manage their own government affairs according to the principle of autonomy and co-administration task.

(3) The provincial, regency, and city governments have the Regional House of People's Representatives whose members are elected through general election.

(4) Governors, Regents and Mayors respectively as heads of provincial, regency and city governments shall be elected democratically.

(5) The regional government exercises the broadest autonomy, except the governmental affairs determined by law to be Governmental affairs.

(6) The regional government has the right to stipulate regional regulation and other regulations to carry out autonomy and co-administration task.

(7) *The composition and procedures for the administration of regional government are regulated in law.*

As part of aspects inherent in regional autonomy, the 1945 Constitution grants the right to regions to form laws and regulations products in the form of regional regulation. As has been stated in Article 18 paragraph (6) of the 1945 Constitution above, as a product of the people's representatives together with the regional government, then Regional Regulation, like the law, can be referred to as a legislative product, while regulations in other forms are the

product of regulation or regulative product. The difference between Regional Regulation and Law is only in terms of the territorial scope or area of the enactment of the regulation, national or local in nature. The law applies nationally, while the Regional Regulation only applies within the area of the relevant regional administration, namely within the province, regency, or city area concerned. Therefore, the regional regulation is no different from "local law" or "*locale wet*", namely local legislation.

The authority of the Central Government in the form of cancellation of the Regional Regulation is based on repressive supervision authority in accordance with the principles in the Law 22/1999. However, the concept of the supervise authority of cancellation of the Regional Regulation to be preventive supervision in the form of evaluation of the Regional Regulation Draft (Raperda) is given to the Ministry to evaluate the Provincial Regional Regulation Draft governing the Regional Long-Term Development Plan (RPJPD), the Regional Medium-Term Development Plan (RPJMD), Regional Government Budget (APBD), Revised Regional Government Budget (APBD), accountability for implementing the Regional Government Budget (APBD), regional taxes, regional levies, and regional spatial planning before being stipulated by the governor. The Regional Government Law also gives authority to the Governor as representative of the Central

Government to evaluate the draft of regency/city regulation governing the Regional Long-Term Development Plan (RPJPD), the Regional Medium-Term Development Plan (RPJMD), Regional Government Budget (APBD), Revised Regional Government Budget (APBD), accountability for implementing the Regional Government Budget (APBD), regional taxes, regional levies and regional spatial planning before stipulated by the regent/mayor [vide Article 245 of the Regional Government Law].

With so many Regional Regulations being canceled by the Central Government on the grounds that those contradict the provisions of the higher laws, public interests and/or decency, the step that should be taken by the Government before carrying out repressive supervision should also conduct guidance (evaluation) to the regions, especially in making Regional Regulation in a sustainable manner. The inappropriate regional regulation draft is immediately returned for revision, so that the possibility of an error in making regional regulation could be minimized as far as possible because cancellation of the regency/city regulation by the Governor was a policy that violated the principle of regional autonomy, the result of the 1998 Reform. This principle is mutual trust in central-regional relations

The position of regional regulation, both provincial regulation and regency or city regulation, can be seen as

equivalent to the law in the sense that it is merely a legal product of the legislative institution. However, in terms of content, it should be the position of the regulation regulates material in the narrower scope of applicable regions is considered to have a lower position compared to regulation with the wider scope of applicable regions. Therefore, the Law is higher than Provincial and Regency/City Regulations.

The Principles of Judicial Power and Rule of Law

Whereas reviewing the laws and regulations under the Law in the Law regarding Judicial Power can be seen historically as follows:

In Article 26 paragraph (1) of the Law Number 14 of 1970 regarding the Basic Provisions for Judicial Power it is stated "*The Supreme Court has the authority to declare invalid all regulations of a lower level from the Law for reasons contrary to higher laws and regulations*". Furthermore, in the Law Number 35 of 1999 regarding Amendment to the Law Number 14 of 1970 regarding Basic Provisions for Judicial Power, Article 26 paragraph (1) above has not changed. Then in the Law Number 4 of 2004 regarding Judicial Power that replaces the Law Number 14 of 1970 related to the authority of the Supreme Court to examine the laws and regulations under the Law, Article 11 paragraph (2) states that the Supreme Court has the authority to examine the laws

and regulations under the Law against the Law. Finally, the Law Number 48 of 2009 regarding Judicial Power that replaces the Law Number 4 of 2004 in Article 20 paragraph (2) states, "*The Supreme Court has the authority: b. examines the laws and regulations under the law against the law*". The elucidation of this article states, "*This provision regulates the right of the Supreme Court to examine the laws and regulations which are lower than the law. The right of review can be done both on the content of paragraphs, articles, and/or parts of higher laws and regulations and on the formation of laws and regulations*".

The existence of judicial review in a rule of law is one of the requirements for the establishment of the rule of law itself, as stated in Article 1 paragraph (3) of the 1945 Constitution. The laws and regulations is only worthy of being reviewed by judicial institution. In other language, a legal product is only valid if it is reviewed through a legal institution called a court. That is the main breath of the rule of law as it is also taught in various theories of the dispersal and separation of powers which lead to the importance of mutual checks and balances. The description of the arrangement in various laws and regulations as described above is clear evidence that the judicial review mechanism is even implemented before the amendment to the 1945 Constitution.

The Regional Regulation is a legal product that not only contains follow-up of higher laws and regulations, but also contains local specialties and needs within the framework of autonomy. The Regional Regulation is also made by regional head and the Regional House of People's Representatives (DPRD), both of whom are democratically elected. The Regional Regulation is made based on the principle of people's sovereignty, because they are made by executive and legislative institutions. Formally the formation of regional Regulation is the result of the manifestation of people's sovereignty carried out through the Regional Head and the Regional House of People's Representatives (DPRD). The people's sovereignty as it is known, is the mandate of Article 1 paragraph (2) of the 1945 Constitution. On the other hand, materially, the Regional Regulation is a legal formulation of the local needs and specificities of each region. In addition, the Regional Regulation also contains criminal provisions.

According to the Law Number 12 of 2011 regarding Formation of Laws and Regulations (Law 12/2011), the Regional Regulation is clearly referred to as a form of laws and regulations with hierarchy under the Law. As long as a legal norm is contained in the form of regulation as referred to in the Law 12/2011, and the level is below the law, then as determined by Article 24A paragraph (1) of the 1945

Constitution, the examination can only be carried out by the Supreme Court, not by the other institution. Likewise, the affirmation in Article 9 paragraph (2) of the Law 12/2011 which determines, "*In the case of a laws and regulations under the Law allegedly contrary to the Law, the examination is carried out by the Supreme Court*".

In the perspective of the unitary state (*unitary state, eenheidsstaat*) it is logical to develop an understanding that superior governments are authorized to exercise control over subordinate government units. It means, the central government in the context of the Unitary State of the Republic of Indonesia based on the 1945 Constitution can certainly be said to have the authority to control provincial government units or regency and city governments. Likewise, the provincial government can also be given certain authority in order to control the running of regency and city government in the field of regulation. Which is controlled by the superior government, for example through the authority to conduct"*executive abstract preview*", not the mechanism of "*review*" for local regulations that are already binding for the public. Therefore, with regard to regional regulation as a legislative product in the regions, it should only be "previewed" by the superior government if their status is still regional regulation draft that is not yet binding for the public. If the regional regulation is binding, then that

should examine it is the judicial institution as a third party that is not involved in the process of forming the relevant regional regulation in accordance with the system adopted and developed according to the 1945 Constitution, namely *"centralized model of judicial review"*, not *"Decentralized model"*, as determined in Article 24A paragraph (1) and Article 24C paragraph (1) of the 1945 Constitution.

[3.12.4] Whereas based on the consideration elucidation in the paragraph **[3.12.3]** above, the Court will further consider the constitutionality issue of the authority to cancel the regency/city regulation and regent/mayor regulation by the governor/ministry and the objection mechanism of the cancellation to the Ministry in Article 251 paragraph (2), paragraph (3), paragraph (4) and paragraph (8) of the Regional Government Law as reviewed by the Petitioners, as follows:

Cancellation of Regency/City Regulation

Whereas the existence of Article 251 paragraph (2) and paragraph (3) of the Regional Government Law which authorizes the Ministry and governor as representatives of the Central Government to cancel Regency/City Regulation that conflicts with the provisions of the higher laws and regulations, in addition to deviating the logic and building of the rule of law of Indonesia as mandated by Article 1 paragraph (3) of the 1945 Constitution also negates the role and function of

the Supreme Court as an institution authorized to conduct the review of laws and regulations under the Law in casu Regency/City Regulation as affirmed in Article 24A paragraph (1) of the Constitution 1945. Likewise regarding public interest and/or decency which are also used as benchmarks in invalidating regional regulations as contained in Article 251 paragraph (2) and paragraph (3) of the Regional Government Law, according to the Court it is also the domain of the Supreme Court to implement these benchmarks, in addition to the provisions of higher laws and regulations, because they are already contained in the law, so that it can also be used as a reference by the Supreme Court in adjudicating the review of Regional Regulation. Article 250 paragraph (1) of the Regional Government Law states that it is contrary to public interest, including: 1. disturbance of harmony among the community members; 2. disturbance of access to public services; 3. disturbance of peace and public order; 4. disturbance of economic activities to improve the welfare of the community; and/or 5. discrimination against ethnicity, religion, and beliefs, race, inter-group, and gender. As for what is meant by decency according to the Elucidation of Article 250 paragraph (1) of the Regional Government Law is the norm relating to courtesy and convenances, good behavior, and noble manners.

Whereas the cancellation of Regency/City Regulation through the governor's decision as representative of the Central Government as referred to in Article 251 paragraph (4) of the Regional Government Law, according to the Court is not in accordance with the regime of laws and regulations adopted by Indonesia. Article 7 paragraph (1) and Article 8 of the Law 12/2011 does not recognize the governor's decision as a type and hierarchy of laws and regulations. Thus the position of the governor's decision is not part of the laws and regulations regime, so it cannot be made a legal product to cancel regency/city regulation. In other words, according to the Court, it is a mistake that the regency/city regulation as a legal product in the form of regulation (*regeling*) can be canceled by the governor's decision as a legal product in the form of decision (*beschikking*). In addition, the excesses of the legal products of the cancellation of regional regulation within the scope of executive with the legal products of the governor's stipulation as stipulated in Article 251 paragraph (4) of the Regional Government Law has potential to cause dualism in court decision if the authority to examine or cancel Regional Regulation is on the executive and judiciary institution.

In the case that regency/city regulation is canceled through the governor's decision the legal remedy carried out is through the State Administrative Court (PTUN) and if the

said legal remedy is granted, the regency/city regulation is revoked by the governor's decision becomes valid again. On the other hand, there is a legal remedy to review the Regional Regulation through the Supreme Court conducted by the Government, the people in the area or those who feel disadvantaged by the enactment of the Regional Regulation. For example, a legal remedy through the Supreme Court is granted, the Regional Regulation is declared invalid. Thus the dualism has occurred on the same issue. Potential dualism of court decision between the decision of the State Administrative Court (PTUN) and the decision of review of Regional Regulation conducted by the Supreme Court on the same substance of the case, only different legal products will lead to legal uncertainty, whereas the legal certainty is the right of everyone guaranteed and protected by Article 28D paragraph (1) of the 1945 Constitution. Therefore, for the sake of legal certainty and in accordance with the 1945 Constitution according to the Court that the review or cancellation of the Regional Regulation becomes the domain of the constitutional authority of the Supreme Court.

Based on the elucidation above, Article 251 paragraph (2), paragraph (3), and paragraph (4) of the Regional Government Law insofar regarding the Regency/City Regulation contradicts the 1945 Constitution as argued by the Petitioner II to the Petitioner VII, the Petitioner IX to the Petitioner

XVII, the Petitioner XX, the Petitioner XXII, the Petitioner XXV to the Petitioner XXXV, and the Petitioner XXXVII to the Petitioner XXXIX reasoned according to law. Likewise, Article 251 paragraph (8) of the Regional Government Law which regulates the mechanism for submitting objection to cancellation of Regency/City Regulation as stipulated in Article 251 paragraph (2), paragraph (3), and paragraph (4) of the Regional Government Law which the Court has declared in conflict with the 1945 Constitution, so Article 251 paragraph (8) of the Regional Government Law loses relevance, therefore Article 251 paragraph (8) of the Regional Government Law insofar regarding Regency/City Regulation shall also be declared contrary to the 1945 Constitution.

Cancellation of Regional Head Regulation (Perkada)

Whereas the Regional Head Regulation according to Article 1 number 26 of the Regional Government Law is the governor's regulation and regent/mayor regulation. Furthermore, Article 246 paragraph (1) of the Regional Government Law states that the regional head has the authority to stipulate Regional Regulation in order to implement Regional Regulation or by the power of laws and regulations. In contrast to Regency/City Regulation established by the Regional House of People's Representatives

(DPRD) with the joint agreement of the Regent/Mayor [Article 1 number 8 of the Law 12/2011], regent/mayor regulation is made by regent/mayor without involving the Regional House of People's Representatives (DPRD) of Regency/City.

Whereas because the Regional Head Regulation is one of the types of laws and regulations based on Article 8 paragraph (2) of the Law 12/2011, however, because it is made only by the regional head as the *bestuur* unit in order to implement regional regulation and mandatory government affairs as determined in the Regional Government Law, so that in the framework of the unitary state, the Central Government as the *bestuur* unit has the authority to cancel the Regional Head Regulation. Cancellation and mechanism for submitting objection to cancellation of Regional Head Regulation in the Regional Government Law are part of the supervision mechanism of the President or Ministry and Governor as representatives of the Central Government to Regional Government or in other words as a form of supervision, not reviewing of laws and regulations, in the *bestuur* environment by the higher *bestuur* unit than the lower *bestuur* unit.

Whereas the previous Regional Government Law, both the Law Number 22 of 1999 and the Law Number 32 of 2004, there are no provisions governing the cancellation of the Regional Head Regulation and the mechanism for submitting objection to the cancellation, unlike the Regional Regulation. Mentioning

Regional Head Regulation uses 2 (two) terms regional head regulation and/or regional head decision [vide Article 146 of the Law Number 32 of 2004 regarding Regional Government] or only with the term regional head decision [vide Article 72 of the Law Number 22 of 1999 regarding Regional Government]. In its development, the Regional Government Law regulates cancellation of the Regional Head Regulation and mechanism for submitting objection to the cancellation which is regulated together with the Regional Regulation. Based on the development, according to the Court, the Lawmaker positions the Regional Head Regulation as decision of the regional head or also referred to as a state administrative decision, even though the legal product is regent/mayor regulation, so that the control mechanism by the government above it can be done and is not contrary to the 1945 Constitution. The mechanism of the superior government control is the scope of the function of state administration (*bestuursfunctie*).

Based on the elucidation above, the regulation on cancellation of the Regional Head Regulation in casu regent/mayor regulation and mechanism for submitting objection to the cancellation as stipulated in Article 251 paragraph (2), paragraph (3), paragraph (4), and paragraph (8) of the Regional Government Law according to the Court do not conflict with the 1945 Constitution, therefore the argument of the Petitioner II to the Petitioner VII, the

Petitioner IX to the Petitioner XVII, the Petitioner XX, the Petitioner XXII, the Petitioner XXV to the Petitioner XXXV, and the Petitioner XXXVII to the Petitioner XXXIX insofar regarding the regent/mayor regulation unreasonable according to the law.

[3.13] Considering whereas based on the entire elucidation of the aforementioned consideration, according to the Court, the Petitioners' argument is grounded according to the law in part as affirmed in this ruling.

4. CONCLUSION

Based on an assessment of the facts and the law as elucidated above, the Court concludes:

[4.1] The court has the authority to adjudicate the petition as such (*a quo*);

[4.2] The Petitioner I, the Petitioner VIII, the Petitioner XVIII, the Petitioner XIX, the Petitioner XXI, the Petitioner XXIII, the Petitioner XXIV, the Petitioner XXXVI, the Petitioner XL to the Petitioner XLVII **have no legal standing** to submit the petition as such (*a quo*);

[4.3] The Petitioner II to the Petitioner VI, the Petitioner IX to the Petitioner XV, the Petitioner XVII, the Petitioner XXII, the Petitioner XXVI to the

Petitioner XXIX, the Petitioner XXXI to the Petitioner XXXV, and the Petitioner XXXVII to the Petitioner XXXIX **have no legal standing** to submit the petition as long as the reviewing Article 9; Article 11; Article 12; Article 13; Article 14 paragraph (1), paragraph (2), paragraph (3), and paragraph (4); Article 15; Article 16 paragraph (1) and paragraph (2); Article 17 paragraph (1), paragraph (2), and paragraph (3); Article 21; Article 27 paragraph (1) and paragraph (2); Article 28 paragraph (1) and paragraph (2) of the Regional Government Law;

[4.4] The Petitioner VII, the Petitioner XVI, the Petitioner XX, the Petitioner XXV, and the Petitioner XXX **have legal standing** to submit the petition as long as the reviewing Article 9; Article 11; Article 12; Article 13; Article 14 paragraph (1), paragraph (2), paragraph (3), and paragraph (4); Article 15; Article 16 paragraph (1) and paragraph (2); Article 17 paragraph (1), paragraph (2), and paragraph (3); Article 21; Article 27 paragraph (1) and paragraph (2); Article 28 paragraph (1) and paragraph (2) of the Regional Government Law;

[4.5] The Petitioner II to the Petitioner VII, the Petitioner IX to the Petitioner XVII, the Petitioner XX, the Petitioner XXII, the Petitioner XXV to the

Petitioner XXXV, and the Petitioner XXXVII to the Petitioner XXXIX **have legal standing** to submit the petition as long as the reviewing Article 251 paragraph (2), paragraph (3), and paragraph (8) and paragraph (4) along the phrase "... *cancellation of Regency/City Regulation and regent/mayor regulation as referred to in paragraph (2) shall be determined by the governor's decision as representative of the Central Government"* the Regional Government Law;

[4.6] Subject matter of the petition of the Petitioner II to the Petitioner VII, the Petitioner IX to the Petitioner XVII, the Petitioner XX, the Petitioner XXII, the Petitioner XXV to the Petitioner XXXV, and the Petitioner XXXVII to the Petitioner XXXIX as long as to the petition for the reviewing Article 251 paragraph (2), paragraph (3), and paragraph (8) and paragraph (4) along the phrase "...*cancellation of Regency/City Regulation and regent/mayor regulation as referred to in paragraph (2) shall be determined by the decision of the governor as representative of the Central Government*" the Regional Government Law reasoned according to the law;

[4.7] Subject matter of the petition of the Petitioner VII, the Petitioner XVI, the Petitioner XX, the Petitioner XXV, and the Petitioner XXX as long as to the

petition for the reviewing Article 9; Article 11; Article 12; Article 13; Article 14 paragraph (1), paragraph (2), paragraph (3), and paragraph (4); Article 15; Article 16 paragraph (1) and paragraph (2); Article 17 paragraph (1), paragraph (2), and paragraph (3); Article 21; Article 27 paragraph (1) and paragraph (2); Article 28 paragraph (1) and paragraph (2) of the Regional Government Law unreasonable according to the law;

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

5. DECISION OF THE JUDGMENT

Adjudicating,

1. To declare the petition of the Petitioner I, the Petitioner VIII, the Petitioner XVIII, the Petitioner XIX, the Petitioner XXI, the Petitioner XXIII, the Petitioner

XXIV, the Petitioner XXXVI, the Petitioner XL to the Petitioner XLVII, **cannot be accepted**;

2. To declare the petition of the Petitioner II to the Petitioner VI, the Petitioner IX to the Petitioner XV, the Petitioner XVII, the Petitioner XXII, the Petitioner XXVI to the Petitioner XXIX, the Petitioner XXXI to the Petitioner XXXV, and the Petitioner XXXVII to the Petitioner XXXIX as long as the reviewing Article 9; Article 11; Article 12; Article 13; Article 14 paragraph (1), paragraph (2), paragraph (3), and paragraph (4); Article 15; Article 16 paragraph (1) and paragraph (2); Article 17 paragraph (1), paragraph (2), and paragraph (3); Article 21; Article 27 paragraph (1) and paragraph (2); Article 28 paragraph (1) and paragraph (2) of the Law Number 23 of 2014 regarding Regional Government (State Gazette of the Republic of Indonesia Number 244 of 2014 and Supplement to the State Gazette of the Republic of Indonesia Number 5587), **cannot be accepted**;

3. **To grant** the petition of the Petitioner II to the Petitioner VII, the Petitioner IX to the Petitioner XVII, the Petitioner XX, the Petitioner XXII, the Petitioner XXV to the Petitioner XXXV, and the Petitioner XXXVII to the Petitioner XXXIX as long as the reviewing Article 251 paragraph (2), paragraph (3), and paragraph (8) and paragraph (4) along the phrase "...*cancellation of*

Regency/City Regulation and regent/mayor regulation as referred to in paragraph (2) shall be determined by the governor's decision as representative of the Central Government" the Law Number 23 of 2014 regarding Regional Government (State Gazette of the Republic of Indonesia of 2014 Number 244 and Supplement to the State Gazette of the Republic of Indonesia Number 5587);

4. To declare the phrase "*Regency/City Regulation and*" in Article 251 paragraph (2) and paragraph (4), the phrase "*Regency/City Regulation and/or*" in Article 251 paragraph (3), and the phrase "*administrater of the Regency/City Government cannot accept the decision of cancellation of the regency/city regulation and*" and the phrase" *regency/city regulation or"* in Article 251 paragraph (8) of the Law Number 23 of 2014 regarding Regional Government (State Gazette of the Republic of Indonesia of 2014 Number 244 and Supplement to the State Gazette of the Republic of Indonesia Number 5587) is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force;

5. **To dismiss** the petition of the Petitioner VII, the Petitioner XVI, the Petitioner XX, the Petitioner XXV, and the Petitioner XXX as long as the reviewing Article 9; Article 11; Article 12; Article 13; Article 14 paragraph (1), paragraph (2), paragraph (3), and paragraph (4);

Article 15; Article 16 paragraph (1) and paragraph (2); Article 17 paragraph (1), paragraph (2), and paragraph (3); Article 21; Article 27 paragraph (1) and paragraph (2); Article 28 paragraph (1) and paragraph (2) of the Law Number 23 of 2014 regarding Regional Government (State Gazette of the Republic of Indonesia Number 244 of 2014 and Supplement to the State Gazette of the Republic of Indonesia Number 5587);

6. To order including this Decision in the State Gazette of the Republic of Indonesia as it should be;

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6. DISSENTING OPINIONS

Regarding this Court's decision as long as regarding the Regency/City Regulation, there are 4 (four) Constitutional Judges, namely Arief Hidayat, I Dewa Gede Palguna, Maria Farida Indrati, and Manahan MP Sitompul have dissenting opinions, as follows:

Whereas specifically on the argument of the Petitioners in the reviewing Article 251 paragraph (2), paragraph (3), paragraph (4), and paragraph (8) of the Law Number 23 of 2014 regarding Regional Government (Regional Government Law), we are of the opinion that the norms of the Regional Government

Law does not contradict the 1945 Constitution, with the following elucidation:

> *First*, whereas Indonesia is a unitary state and at the same time is rule of law [vide Article 1 paragraph (1) and paragraph (3) of the 1945 Constitution]. The basic thing contained in this Constitutional norm is the principle that in the Unitary State of the Republic of Indonesia, a legal system for the Government at the Central and regional levels will apply. So, unlike in a federal or union state, in a unitary state there is no distinction and division between the federal legal system and the state legal system. Therefore, in a unitary state, no matter how broad the autonomy granted to the region (as affirmed in Article 18 paragraph (2) of the 1945 Constitution) and however diverse the specificity or privileges granted to an area (as affirmed in Article 18B paragraph (1) of the 1945 Constitution), the breadth and diversity of specificity or privileges granted to the region shall not be understood as a basis for ignoring the principle of one legal system unit in such a way that as if there are two legal systems in force in the Unitary State of the Republic of Indonesia. In this context the spirit of granting the broadest autonomy to the regions, as stipulated in the Regional Government Law, assessed and understood.

Therefore, the statement in the General Elucidation of the Regional Government Law is correct, which among others states, *"Granting the broadest autonomy to the Regions is carried out based on the principle of the unitary state. In a unitary state, the sovereignty is only in the state government or national government and there is no sovereignty in the Region. Therefore, no matter how broad autonomy is granted to the Regions, the final responsibility for implementing the Regional Government will remain in the hands of the Central Government. For this reason, the Regional Government in a unitary state is a unity with the National Government". In another part of the General Elucidation, the Regional Government Law also emphasized, among others, "Regions as a legal community unit that has autonomy authorizes to regulate and manage their Regions in accordance with the aspiration and interest of their communities as long as they do not conflict with the national legal order and public interest".*

Second, whereas the norm of Article 251 of the Regional Government Law completely reads:

(1) Provincial regulation and governor regulation which are in conflict with higher laws and regulations, public interests, and/or decency are canceled by the Ministry.

(2) Regency/city regulation and regent/mayor regulation which are in conflict with higher laws and regulations, public interests, and/or decency are canceled by the governor as representative of the Central Government.

(3) In the case that the governor as representative of the Central Government does not cancel the Regency/City Regulation and/or regent/mayor regulation that are contrary to higher laws and regulations, public interests, and/or decency as referred to in paragraph (2), the Ministry cancels Regency/City Regulation and/or regent/mayor regulation.

(4) Cancellation of Provincial Regulation and governor regulation as referred to in paragraph (1) shall be determined by the Ministerial Decree and cancellation of Regency/City Regulation and/or regent/mayor regulation as referred to in paragraph (2) shall be determined by the governor's decision as representative of the Central Government.

(5) Not later than 7 (seven) days after the cancellation decision as referred to in paragraph (4), the regional head shall stop the implementation of the Regional Regulation and subsequently the Regional House of People's Representatives together with the regional head revoke the said Regional Regulation.

(6) Not later than 7 (seven) days after the cancellation decision as referred to in paragraph (4), the regional head shall stop the implementation of the Regional Head Regulation and subsequently the regional head revokes the said Regional Head Regulation.

(7) In the case that the administrator of the provincial government cannot accept the cancellation decision of the provincial regulation and the governor cannot accept the cancellation decision of the governor's regulation as referred to in paragraph (4) for reasons that can be justified by the provisions of the laws and regulations, the governor may submit an objection to the President no later than 14 (fourteen) days from the cancellation decision of the Regional Regulation or the governor's regulation is accepted.

(8) In the case that the organisator of the regency/city government cannot accept the cancellation decision of the regency/city regulation and the regent/mayor cannot accept the cancellation decision of the regent/mayor regulation as referred to in paragraph (4) for reasons that can be justified by the provisions of the laws and regulation, the regent/mayor can submit an objection to the Ministry no later than 14 (fourteen) days after the cancellation decision of the

regency/city regulation or the regent/mayor regulation is received.

Third, therefore, in assessing the constitutionality of Article 251 of the Regional Government Law whose norm formulation as elucidated in number 2 above, it shall always depart from the understanding that the authority of the Regional Head and the Regional House of People's Representatives (DPRD) to make Regional Regulation is the authority of attribution (*attributie van wetgevingsbevoegheid*) which can only be given and held by the Constitution and the Law, in this case Article 18 paragraph (6) of the 1945 Constitution and Article 236 of the Regional Government Law. The regional regulation is not delegation regulation from the Law, in this case the Regional Government Law, because if it is true it violates the principle of *delegatie van wetgevingsbevoegheid*, namely the delegation of authority to make laws and regulations from higher to lower regulations. If the Regional Regulation is deemed as a delegation regulation from the Regional Government Law it means that there has been a non-tiered delegation of authority, in this case the delegation of authority exceeds or skips Government Regulation, Presidential Regulation, Ministerial Regulation, so that it is not in accordance with the main principle of delegation of authority.

Fourth, the nature of "*cancellation*" in administrative law is a legal action in the case that a decision made by government official contains legal defects or is no longer eligible, formal or substantive. The aim is to protect the impaire parties and communities from a government decision and restore or negate the legal consequences arising from a decision. The cancellation can be made by the official who makes the decision, the superior official who makes the decision, or the court (in this case the State Administrative Court). Although, in administrative law the cancellation is used against decision (*beschikking*), in the context of the petition as such (*a quo*), the rationality of the law can be accepted if the cancellation is applied to regional regulation or regional head regulation. Because, constitutionally, the President is the person in charge of the highest government. Thus, implicitly, it is the president's obligation to take action on legal products of government administrators that contain defects, in this case the defect is that the legal products of government administrators are contrary to higher laws and regulations, public interest, and/or decency.

Fifth, according to Article 4 of the 1945 Constitution, the President is the holder of government authority. Therefore, it is precisely the formula contained in

Article 1 number 1 of the Regional Government Law which says the Central Government is the President of the Republic of Indonesia who holds the power of the government of the Republic of Indonesia assisted by the Vice President and ministers as referred to in the 1945 Constitution of the Republic of Indonesia. In other words, the person responsible for the overall implementation of government is the President. This is because Indonesia is a unitary state, as affirmed in Article 1 paragraph (1) of the 1945 Constitution. Regional government is part of the exercise of government power. Thus, even though based on Article 18 of the 1945 Constitution the regions are given the broadest autonomy to also organize the government, the final person responsible for the administration of the government will remain the President. Therefore, the President has an interest and is based on law to ensure that the administration of the government under his responsibility, in casu regional government, does not conflict with higher laws and regulations, public order, and/or decency. Thus, it is constitutional if the President, through the Minister and governor as representatives of the Central Government in the region, given the authority to cancel regional regulation.

Sixth, whereas the Regional Government, according to Article 1 number 2 of the Regional Government Law, is the

administration of government affairs by the regional government and the regional house of people's representatives according to the principle of autonomy and co-administration task with the principle of the broadest autonomy in the system and principles of the Unitary State of the Republic of Indonesia as referred to in the 1945 Constitution of the Republic of Indonesia. Meanwhile, the regional head and the regional house of people's representatives, according to Article 1 number 2 and 3 of the Regional Government Law, are both elements of the administrators of Regional Government. As for regional regulation, based on Article 236 paragraph (2) of the Regional Government Law, is a joint product of the regional house of people's representatives and the regional head whose material can contain the implementation of Regional Autonomy, further elucidation of the provisions of higher laws and regulations, or local content material in accordance with the provisions of the laws and regulations. In other words, the material contained in regional regulation is the material which substitutes governmental affairs. Thus, regional regulation is joint products of elements of regional government whose content material is government affairs. Whereas the Government Affairs, as affirmed in Article 1 number 5 of the Regional Government Law, are government

powers which become the authority of the President whose implementation is carried out by the ministries and administrators of Regional Government to protect, serve, empower, and improve the welfare of the community.

Therefore, postulating norms that authorize the President (through Ministers and governors as representatives of the Central Government) to cancel regional regulationsand regional head regulation as unconstitutional norms is the same as stating that regional government is not part of the authority of government whose final responsibility is in the the hands of the president. Likewise, the argument of the norms that authorize the President (through Ministers and governors as representatives of the Central Government) to cancel regional regulation as unconstitutional norms on the grounds that the Regional House of People's Representatives (DPRD) is a regional legislative body is the same as stating that the Regional House of People's Representatives (DPRD) is not part of the element of regional government administration.

Seventh, whereas the act of cancellation shall be distinguished from judicial review or review of laws and regulations. The authority of judicial review is part of the authority of court power or judicial power which can be requested by parties who impaired by the enactment of a laws and regulation, in casu regional regulation, because

the said laws and regulations are contradictory to higher laws regulations. Meanwhile, as elucidated above, the cancellation is part of the power of government (executive). Therefore, the Regional Government Law which gives authority to the President (through Ministers and governors) to revoke regional regulation and regional head regulation is not intended to replace or take over the authority of judicial review in the hands of the holder of court or judicial power. In other words, the Regional Government Law does not obstruct or eliminate the rights of those who impaired by the enactment of a regional regulation or regional head regulation to submit judicial review.

Based on all the elucidation above, we believe that the Court should reject the petition of the Petitioners insofar as it concerns the constitutionality review of Article 251 paragraph (2), paragraph (3), paragraph (4), and paragraph (8) of the Regional Government Law.

Thus, it has been decided in the Consultative Session of the Justices by nine Constitutional Justices, namely Arief Hidayat as the Chief Justice concurrently as a Member, Anwar Usman, Suhartoyo, Aswanto, I Dewa Gede Palguna, Manahan M.P Sitompul, Maria Farida Indrati, Patrialis Akbar, and Wahiduddin Adams, respectively as Members, on **Monday**, **the twenty second of August two thousand and sixteen**, and eight

Constitutional Justices, namely Arief Hidayat as the Chief Justice concurrently as a Member, Anwar Usman, Suhartoyo, Aswanto, I Dewa Gede Palguna, Manahan M.P Sitompul, Maria Farida Indrati, and Wahiduddin Adams, respectively as Members, on **Thursday, the second of February two thousand and seventeen**, and on **Friday, the thirty first of March two thousand and seventeen**, which was pronounced in the Plenary Session of the Constitutional Court open to the public on **Wednesday, the fifth of April two thousand and seventeen**, fully pronounced **at 15.14 WIB** (Western Indonesia Time), by eight Constitutional Justices, namely Arief Hidayat as the Chief Justice concurrently as a Member, Anwar Usman, Suhartoyo, Aswanto, I Dewa Gede Palguna, Manahan M.P Sitompul, Maria Farida Indrati, and Wahiduddin Adams, respectively as Members, in the presence of Syukri Asy'ari as Substitute Registrar, in the presence of the Petitioners/their attorneys, the President or his representative, and the People's Representative Council or its representative.

CHIEF JUSTICE,

signed

Arief Hidayat

MEMBERS,

signed	**Signed**
Anwar Usman	**Suhartoyo**
Signed	**Signed**
Aswanto	**I Dewa Gede Palguna**
Signed	**Signed**
Manahan M.P Sitompul	**Maria Farida Indrati**

Signed

Wahiduddin Adams

SUBSTITUTE REGISTRAR,

Signed

Syukri Asy'ari