

**EXCERPT FROM THE DECISION OF THE CONSTITUTIONAL COURT OF  
THE REPUBLIC OF INDONESIA**

Decision Number 23-26/PUU-VIII/2010 Concerning Review of Law Number 27  
Year 2009 regarding the People's Consultative Assembly, the People's  
Legislative Assembly, Regional Representatives' Council and Regional People's  
Legislative Assembly under the 1945 Constitution of the Republic of Indonesia

**DECISION**

**Number 23-26/PUU-VIII/2010**

**FOR THE SAKE OF JUSTICE UNDER  
THE ONE ALMIGHTY GOD**

**THE CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA**

**[1.1]** Examining, hearing and deciding upon constitutional cases at the first and final levels, has passed a decision in the case of petition for Judicial Review of Law Number 27 Year 2009 regarding the People's Consultative Assembly, the People's Legislative Assembly, Regional Representatives' Council and Regional People's Legislative Assembly under the 1945 Constitution of the Republic of Indonesia filed by:

**Petitioner in Case Number 23/PUU-VIII/2010**

**[1.2]** **M. Farhat Abbas, SH., MH.,** place/date of birth in Tembilahan, on June 22

1976, Advocate, residing at Jalan Kemang Utara Raya VII, Number 11, Neighborhood Ward 002, Neighborhood Block 004, Bangka Sub-District, Mampang Prapatan District, South Jakarta;

By virtue of the Special Power of Attorney dated March 29 2010, authorization is granted to **Rakhmat Jaya, SH., MH., Muh. Burhanuddin, SH., Moh. Yaser Arafat, SH., Dirga Rachman, SH., Rama Difa, SH., Gatot Murniaji, SH., Hamka, SH., Windu, SH., Katika Rianingtyas, SH. and Donny Setiawan, SH.**, all of them being advocates and legal consultants in the Law Firm of Farhat Abbas and partners, having their office at Plaza Basmar Building 1<sup>st</sup> floor, Jalan Mampang Prapatan Raya, Number 106 South Jakarta, either jointly or separately acting for and on behalf of the authorizer;

Hereinafter referred to as ----- **the Petitioner I;**

#### **Petitioners in Case Number 26/PUU-VIII/2010**

[1.3] **A. Individual Members of the People's Legislative Assembly of the Republic of Indonesia consisting of:**

1. **Lili Chadijah Wahid**, a Member of the People's Legislative Assembly of the Republic of Indonesia, residing at KP. Rawa Selatan Neighborhood Ward 001/Neighborhood Block 04 Kampung Rawa Sub-District, Johar Baru District, Central Jakarta;
2. **Bambang Soesatyo, SE., MBA.**, a Member of the People's Legislative

- Assembly of the Republic of Indonesia, residing at Jalan Bala Dewa B/11  
Neighborhood Ward 014/Neighborhood Block 006 Duren Sawit Sub-  
District, Duren Sawit District, East Jakarta;
3. **Akbar Faizal**, a Member of the People's Legislative Assembly of the  
Republic of Indonesia, residing at KKDR Anggrek-3 Blok F1 RT.07/RW.06  
Tirta Jaya Sub-District, Sukmajaya District, Depok City;

**B. Individual Indonesian Citizens consisting of:**

1. **Abdulrachim Kresno**, residing at Jalan Senayan 32, Neighborhood Ward  
006/Neighborhood Block 006, Hawa Barat Sub-District, Kebayoran Baru  
District, South Jakarta;
2. **Agus Suroto**, residing at Komplek Nata Endah Blok V Number 1, Cibabat,  
Cimahij;
3. **Ir. Darwis Darlis**, residing at Jl. Tegal Parang Selatan I Number 21  
Neighborhood Ward 01/ Neighborhood Block 05, Sub-District Tegal  
Parang, Mampang Prapatan District, South Jakarta;
4. **Drs. Dody Rudianto, MM**, residing at Komp Wirana Number 17  
Neighborhood Ward 006/ Neighborhood Block 008, Jati Makmur Sub-  
District, Pondok Gede District, Bekasi;
5. **Dwi Soebawanto**, residing at Jalan Patrakomala Number 40,  
Neighborhood Ward 05/ Neighborhood Block 06, Merdeka Sub-District,

Sumurbandung District, Bandung, West Java, in accordance with Special Power of Attorney dated April 5 2010.

6. **Elong Suchlan**, residing at Jalan Galaxy Raya Number 94, Neighborhood Ward 004/ Neighborhood Block 007 Sekejar Sub-District, Buah Batu District, Bandung, West Java;
7. **Erfanto Sanaf**, residing at Jalan Singaraja 29, Neighborhood Ward 005 Neighborhood Block 010, Antapani Kidul Sub-District, Antapani District, Bandung, West Java;
8. **Ir. Alwisman Dahlan**, residing at Jalan. Pulo Mas II/c Number 6, Villa Sari Mas, Jakarta, 13210;
9. **Ir. S. Indro Tjahyono**, residing at Jalan Lumbu Tengah VI A/51, Neighborhood Ward 002, Neighborhood Block 028, Bojong, Raisalumbu, Bekasi City;
10. **Ir. Sayuti Asyathri**, residing at Jalan Ciliwung I, RT 010/006, Cililitan, Kramat Jati, East Jakarta;
11. **Machmud Madjid**, residing at Jalan Riung Mungpulung IB Number 14 Komp Riung Bandung, Neighborhood Ward 008/Neighborhood Block 009, Babarancem Kidul Sub-District, Gedebage District, Bandung, West Java;
12. **Mohammad Hatta Taliwang**, residing at Jalan Bako III Number .36, Komplek Pharmindo, Cimahi, Bandung;

13. **Muchtar Effendy Harahap**, residing at Jalan Mustika Jaya IV Neighborhood Ward 002/Neighborhood Block 011, Rawamangun Sub-District, Polo Gadung District, East Jakarta;
14. **Ir. Suluh Tjiptadi**, residing at Jalan Nusa Indah Number 177 A KPAD Neighborhood Ward 09/Neighborhood Block 02, Gegerkalong Sub-District, Sukasari District, Bandung;
15. **Tashudi Yanto**, residing at Jalan Ikan Pari Blok A Number 66/29, Neighborhood Ward/Neighborhood Block 001, Teluk Betung Sub-District, Teluk Betung Selatan District, Bandar Lampung;
16. **Umar Marasabessy**, residing at Jalan Bengkong Padurenan Number 53, RT.002/RW.03 Padurenan Sub-District, Mustika Jaya District, Bekasi, West Java;

By virtue of the Special Power of Attorney dated April 5 2010, authorization is granted to **Dr. Maqdir Ismail, SH., LL.M., Dr. S.F. Marbun, SH., M.Hum., M. Rudjito, SH., LL.M., Ari Yusuf Amir, SH., MH., Dasril Affandi, SH.,MH., Sugito, SH., Mirza Zulkarnain, SH., MH., Masayu Donny Kertopati, SH., Ilham Nur Akbar, SH. and Ade Kurniawan, SH.**, all of them being advocates and legal consultants in the Law Firm of Maqdir Ismail & Partners, having their office at Jalan Bandung Number 4, Menteng, Jakarta 10310, either jointly or separately acting for and on behalf of the authorizer;

Hereinafter referred to as ----- **the Petitioner II**;

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

**[1.4]** Having read the petition of the Petitioners;

Having heard the statement of the Petitioners;

Having heard the oral statement and read the written statement of the Government;

Having read written the statement of the People's Legislative Assembly;

Having heard and read the conclusion of the Petitioners;

Having examined evidence submitted by the Petitioners;

Having read the conclusion of the Petitioners;

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

And so on

## **3. LEGAL CONSIDERATIONS**

**[3.1]** Whereas the main problem of the Petitioners' petition is to review the constitutionality of Article 184 paragraph (4) of Law Number 27 Year 2009 regarding the People's Consultative Assembly, the People's Legislative Assembly, Regional Representatives' Council and Regional People's Legislative

Assembly (State Gazette of the Republic of Indonesia Year 2009 Number 123, Supplement to the State Gazette of the Republic of Indonesia Number 5043 hereinafter referred to as Law 27/2009) against Article 7B paragraph (3) and Article 20A paragraph (1), paragraph (2), paragraph (3), the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution);

**[3.2]** Whereas prior to addressing the substance of the petition, the Constitutional Court (hereinafter referred to as the Court) will consider the following things in advance:

- a. the authority of the Court to examine, hear and decide upon petition *a quo*;  
and
- b. the legal standing of the Petitioners;

Regarding the aforementioned things, the Court is of the opinion as follows:

### **Court Authority**

**[3.3]** Whereas pursuant to Article 24C paragraph (1) of the 1945 Constitution and Article 10 paragraph (1) sub-paragraph a of Law Number 24 Year 2003 regarding the Constitutional Court (State Gazette of the Republic of Indonesia Year 2003 Number 98, Supplement to the State Gazette of the Republic of Indonesia Number 4316, hereinafter referred to as the Constitutional Court Law) *juncto* Article 29 paragraph (1) sub-paragraph a of Law Number 48 Year 2009

regarding Judicial Power (State Gazette of the Republic of Indonesia Year 2009 Number 157, Supplement to the State Gazette of the Republic of Indonesia Number 5076), the Court shall be authorized to hear in the first and final levels the decision of which shall be final to review Laws under the 1945 Constitution;

**[3.4]** Whereas the Petitioners' petition is to review norm constitutionality of Article 184 paragraph (4) of Law Number 27 Year 2009 regarding the People's Consultative Assembly, the People's Legislative Assembly, Regional Representatives' Council and Regional People's Legislative Assembly against Article 7B paragraph (3), and Article 20A paragraph (1), paragraph (2), paragraph (3) of the 1945 Constitution. Accordingly, the Court shall be authorized to examine, hear and decide upon the petition *a quo*;

### **Legal Standing of the Petitioners**

**[3.5]** Whereas the Court subsequently considered the legal standing of each Petitioner, as follows:

**[3.5.1]** Whereas in order to determine the legal standing of the Petitioners, the Court shall need to refer to:

1. Article 51 of the Constitutional Court Law, determining:

*”(1) Petitioners shall be parties who consider that their constitutional right and/or authority is/are impaired by the coming into effect of a law, namely:*

*a. individual Indonesian citizens (including groups of people*



*having a common interest);*

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

*"(2) Petitioners shall be obligated to clearly describe their petition concerning their constitutional right and/or authority as intended in paragraph (1)".*

*"(3) In the petition as intended in paragraph (2), petitioners shall be obligated to clearly describe that:*

- a. the formulation of law does not comply with the provisions under the 1945 Constitution; and/or*
- b. substantive content in paragraph, article, and/or part of law shall be deemed to be inconsistent with the 1945 Constitution".*

2. Following the Court's Decision Number 006/PUU-III/2005 dated May 31 2005 and the Court's Decision Number 11/PUU-V/2007 dated September 20 2007, as well as the subsequent Decisions, the Court is are of the opinion that the impairment of constitutional right and/or authority as intended Article 51 paragraph (1) of the Constitutional Court Law shall meet five requirements, namely:

- a. the existence of constitutional rights and/or authority of the Petitioners granted by the 1945 Constitution;
- b. the Petitioners consider that such constitutional rights and/or authority have been impaired by the coming into effect of the law petitioned for review;
- c. the impairment of such constitutional rights and/or authority must be specific and actual or at least potential in nature which, pursuant to logical reasoning, can be assured of occurring;
- d. there is a causal relationship (*causal verband*) between the impairment of constitutional rights and/or authority of the Petitioners and law petitioned for review;
- e. the possibility that with the granting of the Petitioners' petition, the impairment of such constitutional rights and/or authority argued by the Petitioners will not or will argued by the Petitioners will not or will no longer occur;

**[3.5.2]** Whereas Petitioner I (Petition Number 23/PUU-VIII/2010) and Petitioner II are individuals as many as 16 persons (Petition Number 26/PUU-VIII/2010) as individual citizens, that principally argue to have constitutional rights provided for in the 1945 Constitution, namely:

Article 1 paragraph (3) stating that “*The State of Indonesia shall be a Rule of Law State*”.

Article 20A paragraph (1) stating that, *“The People's Legislative Assembly shall have functions of legislation, budget and supervision”.*

Article 20A paragraph (2), stating that, *“In performing its functions, in addition to the right provided for in other laws in this Constitution, the People's Legislative Assembly shall have the right to interpellation, right to inquiry and right to express opinion”.*

Article 20A paragraph (3), stating that, *“In addition to the right provided for in other laws in this Constitution, the People's Legislative Assembly shall have rights to pose question, to give proposal and opinion, as well as right of immunity”.*

Article 7B paragraph (3), stating that, *“The submission of request of the People's Legislative Assembly to the Constitutional Court may only be conducted with support at a minimum of 2/3 of the number of members of the People's Legislative Assembly present in plenary session attended by a minimum of 2/3 of the number of members of the People's Legislative Assembly”.*

According to the Petitioners, their constitutional rights have been impaired due to the coming into effect of the provision of Article 184 paragraph (4) of Law 27/2009 stating that, *“The proposal as intended in paragraph (1) shall become the right to express opinions of the People's Legislative Assembly in the event that the approval of plenary meeting of the People's Legislative Assembly attended by a minimum of 3/4 (three-fourth) of the number of members of the*

*People's Legislative Assembly is obtained and the decision is made with the approval of a minimum of 3/4 (three-fourth) of the number of members of the People's Legislative Assembly present".*

**[3.5.3]** Whereas the aforementioned individual Petitioners argue that the availability of the provision of Article 184 paragraph (4) of Law 27/2009 has impaired their constitutional rights as individual Indonesian citizen guaranteed by the constitution, namely the right to participate in Indonesian state government as well as right to supervise government administration based on the principle of rule of law state;

**[3.5.4]** Whereas with respect to the legal standing of individual Petitioners, the Government and the People's Legislative Assembly has given its statement that the individual Petitioners do not have legal standing to file this Petition, for the main reason that in fact the activities of the Petitioners are not disturbed, lessened or at least impeded to pay attention to the life of democracy in Indonesia through various facilities available as guaranteed by the constitution or other laws and regulations. According to the Government and the People's Legislative Assembly, there is no specific and actual impairment of constitutional experienced by the Petitioners and no causal relationship (causal verband) between the impairment experienced by the Petitioners and the coming into effect of Article 184 paragraph (4) of Law 27/2009. In addition to that, the Articles of the 1945 Constitution referred to by the Petitioners are Articles providing for constitutional right and authority of the People's Legislative Assembly which is

not individual constitutional right. Likewise, according to the People's Legislative Assembly, the Petitioners as individual citizens did not satisfy legal standing to file this petition on behalf of the interest of the public;

**[3.5.5]** Whereas the state of Indonesia is the state adhering to the principles of rule of law state which includes meanings, among other things: supremacy of law, equality before the law, any state action must be based on law and due process of law, limitation of power, protection of human rights, implement principles of democracy, transparency and social control as well as be oriented to the endeavor to actualize the objectives of managing a government in order to create welfare state. Based on such principles, the Petitioners as Indonesian citizens having actively participated in the governance among other things as voters in general election are entitled to participate in the governance under democracy principles guaranteed by the constitution. The form of participation of the aforementioned citizens is conducted by, among other things: participating to control the administration of state governance on constitutional basis, either directly in the form of expressing opinion and idea about the administration of state governance, participating to vote in determining state leader (Exhibits P-3b.1 up to P-3b.8) as well as entitled to file petition of review of Law to the Court in order to straighten out the administration of state governance, or indirectly through the mechanism of people's representatives, namely the People's Legislative Assembly, Regional Representatives' Council and Regional People's Legislative Assembly. According to the Court, the right of citizens to control the administration of state governance does not instantly forfeited or transferred to

the people's representatives they voted to become members of the People's Legislative Assembly, Regional Representatives' Council or Regional People's Legislative Assembly. The people as sovereignty holder being entitled to control or supervise the administration of state governance forfeit their constitutional right to express aspiration to the People's Legislative Assembly due to the impediment to the right of the People's Legislative Assembly as a people's representative institution to exercise right to express opinions as a consequence of a very strict quorum requirement or the requirement of approval of members of the People's Legislative Assembly to exercise the right to express opinions. Accordingly, according to the Court, the presence of provisions of Article 184 paragraph (4) results in the impediment to the right of the People's Legislative Assembly as a people's representative institution to supervise the President, and it also indirectly impedes the exercise of sovereignty rights possessed by the people In supervising the administration of state governance;

**[3.5.6]** Whereas based on the aforementioned considerations, according to the Court, the Petitioners of individual citizens have constitutional rights impaired due to the coming into effect of Article 184 paragraph (4) of Law 27/2009, so that *prima facie* of the Petitioners have legal standing In filing the petition of *a quo*;

**[3.6]** Whereas related to legal standing of the Petitioners in their capacity/position as members of the People's Legislative Assembly, the Court expressed its opinion first as considered in its previous decisions, namely Decision Number 20/PUU-V/2007, dated December 17 2007 and Decision

Number 151/PUU-VII/2009, dated June 3 2010. In the decision *a quo*, the Court is of the opinion that the members of the People's Legislative Assembly do not have legal standing to file petition of review of Law to the Court for the main reason that the meaning of "Indonesian individual" in Article 51 of paragraph (1) sub-article a of the Constitutional Court Law shall be different with Indonesian citizens having their position as members of the People's Legislative Assembly since the Indonesian individual having their position as members of the People's Legislative Assembly do not have constitutional right as a basis or argument of the impairment of constitutional right of the Petitioner, namely constitutional right in Article 11 paragraph (2) and Article 20A paragraph (1) of the 1945 Constitution. The 1945 Constitution has explicitly and expressly determined constitutional right for Indonesian citizens, members of the People's Legislative Assembly, or the People's Legislative Assembly as an institution. The Petitioners as members of the People's Legislative Assembly shall have right guaranteed by the constitution to form Law or file proposal to amend a Law. This right shall not be possessed by citizens who are not members of the People's Legislative Assembly. The 1945 Constitution shall determine constitutional right of members of the People's Legislative Assembly as set forth in Article 20A paragraph (3) of the 1945 Constitution stating *"In addition to the right provided for in other articles in this Constitution, any member of the People's Legislative Assembly shall have the right to pose question, to give proposal and opinion as well as right of immunity"*, and Article 21 of the 1945 Constitution stating *"Members of the People's Legislative Assembly shall be entitled to give proposal of draft law"*. The

People's Legislative Assembly as an institution having constitutional right/authority provided for in Article 11 paragraph (1) and paragraph (2), Article 12 paragraph (3), Article 13 paragraph (2), Article 14 paragraph (1), Article 20 paragraph (1), Article 20A paragraph (2), Article 22 paragraph (2), Article 24B paragraph (1), Article 24A paragraph (3) as well as Article 24C paragraph (3), Article 7A and 7B of the 1945 Constitution;

**[3.7]** Whereas related to legal standing of the Petitioners as members of the People's Legislative Assembly in this Petition, the Court is of the opinion that *objectum litis* petition of the Petitioners is Article 184 paragraph (4) of Law 27/2009 which determines the minimum number of quorum shall be 3/4 of the number of members of the People's Legislative Assembly and for the making of decision shall be agreed by a minimum of 3/4 of members of the People's Legislative Assembly present as a requirement in order that the People's Legislative Assembly is able to institutionally exercise right to express opinions. According to the Court, "right to express opinion" in provision *a quo* is related to the constitutional right embedded only in members of the People's Legislative Assembly and is not a right of other citizens. In other words, the People's Legislative Assembly as an institution may exercise the aforementioned right, provided that it is approved by the members of the People's Legislative Assembly respectively having right guaranteed by the constitution to control the administration of state governance. Therefore, according to the Court, the Petitioners as members of the People's Legislative Assembly, in addition to having right expressly provided for in Article 20A paragraph (3) and Article 21 of



the 1945 Constitution, also have constitutional rights embedded in the right of the People's Legislative Assembly as an institution. This construction becomes very reasonable if it is related to the principle that the position of the members of the People's Legislative Assembly is compound position, namely position in an institution the decision of which must be stipulated collectively through certain mechanism and quorum. In relation to this petition, constitutional right to participate in deciding the exercise of "right to express opinion" as a control mechanism to the People's Legislative Assembly for a government policy may be impeded or cannot be exercised due to the presence of provision of Article 184 paragraph (4) of the Law *a quo*. Even more, if it is related to the position of the Petitioners as members of the People's Legislative Assembly the number of which is minor in relation to certain things which must be decided by the People's Legislative Assembly such as in the right to express opinions which becomes impossible to be passed with approval of 3/4 members of the People's Legislative Assembly, whereas in the frame of administration of democracy system, right to express opinions is check and balance between institution of the People's Legislative Assembly and the Government. If so, there will be no mechanism to straighten out the administration of democracy system through an institution of the People's Legislative Assembly since the requirement of approval and quorum become very high (absolute majority is 3/4 of members of the People's Legislative Assembly). Accordingly, in this case, the position of members of the People's Legislative Assembly is different with the position of members of the People's Legislative Assembly in the Decision of the Court Number 20/PUU-

V/2007 dated December 17 2007 and Decision Number 151/PUU-VII/2009, dated June 3 2010, since in this case, the matter questioned is exclusive right which is only possessed by members of the People's Legislative Assembly. Therefore, according to the Court, the Petitioners as members of the People's Legislative Assembly, special in this petition have legal standing to file petition *a quo*;

**[3.8]** Whereas since the Court is authorized to examine, hear and decide upon petition *a quo*, and the Petitioners have legal standing, subsequently the Court will consider substance of the petition;

### **Opinion of the Court**

#### **Principal Issue of the Petition**

**[3.9]** Whereas the petition of the Petitioners is to review the constitutionality Article 184 paragraph (4) of Law 27/2009 stating that, "*The proposal as intended in paragraph (1) shall become right to express opinions of the People's Legislative Assembly in the event that the approval of plenary meeting of the People's Legislative Assembly attended by a minimum of 3/4 (three-fourth) of the number of members of the People's Legislative Assembly is obtained and the decision is made with approval of a minimum of 3/4 (three-fourth) of the number of members of the People's Legislative Assembly present*", to Article 1 paragraph (3), Article 7B, and Article 20A of the 1945 Constitution;

**[3.10]** Principally, the Petitioners argue that Article 184 paragraph (4) of Law

27/2009 which determines the quorum and approval of a minimum of 3/4 members of the People's Legislative Assembly to exercise right to express opinions is inconsistent with the constitution, namely violate fundamental right of the members of the People's Legislative Assembly to supervise the administration of governance as well as inconsistent with the principle of people's sovereignty (democracy), either performed directly or through representative system. According to the Petitioners, Article 184 paragraph (4) of Law 27/2009 is inconsistent with the principle of people's sovereignty guaranteed by the constitution granting authorization to the People's Legislative Assembly to supervise the President to reveal the truth of a government's policy implying the life devoted to the nation and country. In addition to that, according to the Petitioners, the provision of Article *a quo* only protects the interest of the group having dominant seats to perpetuate the system of power, so that the truth emerging is only the truth based on the number of votes of a dominant group which may ignore legal interest and democracy. Even more, the provision of Article *a quo* violates the provision of Article 7B paragraph (3) of the 1945 Constitution which is imperative in the frame of establishing the principle of checks and balances and the principle of equality between state institution adhered by the 1945 Constitution;

**[3.11]** Whereas in order to strengthen the argument, the Petitioners filed written evidences in the form of Exhibit P-1 up to Exhibit P-6 for Petition Number 23/PUU-VIII/2010, Exhibit P-1 up to Exhibit P-3b.8 and five experts, namely Aidul Fitriada Azhari, Saldi Isra, Mohamad Fajrul Falaakh, Adnan Buyung Nasution,

and Ibramsyah for Petition Number 26/PUU-VIII/2010. Principally, the experts describe as follows:

#### **AIDUL FITRICIADA AZHARI**

- Procedure of the dismissal of the President is provided for limitedly by the constitution, even more, no delegation *provisio*, so that no delegation of regulation to organic Law which is limited in nature. Article 184 of Law 27/2009 providing for stricter requirements than paragraph (4) of the provision of Article 7B of the 1945 Constitution should not be denied or blamed. As a result, according to the Experts, Article 184 paragraph (4) of the Law *a quo* is inconsistent with the principle of constitution supremacy and the principle of checks and balances in presidential system adhered by the 1945 Constitution.

#### **SALDI ISRA**

- Regulation concerning the procedures and quorum available in Article 7B of the 1945 Constitution and requirement to initiate the process of impeachment of the President are not legal policy of legislators. It is different with the constitution of the United States and the constitution of the Philippines which give delegation opportunity to Law in order to give further explanation about the mechanism and requirement of impeachment. According to experts, even there is regulation in Law, such regulation may not diminish constitutional requirement determined by the 1945 Constitution. The availability of the requirement of quorum and

approval of a minimum of 3/4 members of the People's Legislative Assembly which is stricter than the provision of the constitution to exercise right to express opinions hindering the impeachment of the President will protect the President committing violation of law until his/her term of office.

#### **MUHAMMAD FAJRUL FALAAKH**

- The right to express opinions is an instrument of function of supervision of the People's Legislative Assembly. Such right is generally and specifically provided for, either *lex generalis* or *lex specialis*. According to the Experts, Article 184 paragraph (4) of the Law *a quo* is confusing since the proposal having been decided with approval of a minimum of 3/4 members of the People's Legislative Assembly in the hearing attended by a minimum of 3/4 members of the People's Legislative Assembly which only has proposal status still must be re-decided with the formula of approval of a minimum of 2/3 members of the People's Legislative Assembly in the hearing attended by a minimum of 2/3 members of the People's Legislative Assembly. Such provision has impeded the right of institution of the People's Legislative Assembly to express opinions in the frame of impeachment of the President and/or the Vice President intending to exercise the aforementioned right, so that it harms the right of citizens through their representatives to control the government as a part of rights of representative democracy.

#### **ADNAN BUYUNG NASUTION**

- Article 184 paragraph (4) of the Law *a quo* has violated the provision which we made it standard to amend constitution. The proposal to amend the Constitution in the Hearing of the People's Consultative Assembly is filed by a minimum of 1/3 of number of members of the People's Consultative Assembly. It is a standard provision which has never been amended. The number of 2/3 is a normative provision for basic amendment, namely to amend the Constitution. If Article 184 paragraph (4) must obtain approval from the plenary meeting which must be attended and approved by a minimum of 3/4 of members of the People's Legislative Assembly to exercise right to express opinion, it is suppression of standard constitutional rights. The People's Legislative Assembly functions to supervise, and to do so, it should not be hindered. Otherwise, it must be easier to supervise since if it is hindered, the supervision by the People's Legislative Assembly cannot succeed.

#### **IBERAMSJAH :**

- If viewed from the aspect of checks and balances system, it is legislative weakening (the People's Legislative Assembly). If people easily amend, supplement or even eliminate the substance of the Constitution, either quantitative or qualitative, politically, it will highly hinder and endanger the life devoted to the nation and country, particularly from point of view of politics. If viewed from point of view of politics, it will endanger any regime in the future since amendments will be made which may endanger the life

as a nation.

[3.12] Whereas regarding the petition of the Petitioners, the Government has given its oral and written statements substantially explaining that Article 184 paragraph (4) UU 27/2009 does not violate the 1945 Constitution for the main reason that such provision is intended that in making decision which is related to strategic matters and may result in national-scaled certain impacts, a quite significant support of members of the People's Legislative Assembly originating from various political parties which place their representatives in the aforementioned People's Legislative Assembly is required. The standard of percentage number is at minimum of 3/4 (three-fourth) as provided for in the aforementioned provision filed to be examined and is also a reflection or actualization of strong legitimacy of the People's Legislative Assembly. In other words, it is as a reflection of the majority of support of Indonesian people in particular in the frame of exercising right to express opinions of the aforementioned People's Legislative Assembly. In addition to that, the aforementioned standard of percentage number is also intended to maintain the stability of governance and national development running. According to the Government, Article *a quo* is also in line with the provision of Article 7B paragraph (7) of the 1945 Constitution of the Republic of Indonesia stating that *"Decision of the People's Consultative Assembly based on proposal of the dismissal of the President and/or the Vice President shall be made in the plenary meeting of the People's Consultative Assembly attended by a minimum of 3/4 members and approved by a minimum of 2/3 members present following the*

*opportunity given to the President and/or the Vice President to convey explanation in the plenary meeting of the People's Consultative Assembly";*

**[3.13]** Whereas regarding the petition of the Petitioners, the People's Legislative Assembly has given its statement substantially explaining that the provision of the minimum of 3/4 (three-fourth) in Article 184 paragraph (4) of Law 27/2009 is not inconsistent with Article 7B paragraph (3) of the 1945 Constitution. Two different things substantially contain between both provisions. Article 7B paragraph (3) of the 1945 Constitution shall provide for formal requirement of request submission of the People's Legislative Assembly of the Republic of Indonesia to the Constitutional Court, while Article 184 paragraph (4) of Law 27/2009 shall provide for formal requirement of right to express opinions of the People's Legislative Assembly in the plenary meeting of the People's Legislative Assembly. According to the People's Legislative Assembly, Article 184 paragraph (4) of Law 27/2009 is related to the performance of supervision function as intended in Article 20A paragraph (1) and paragraph (2) of the 1945 Constitution. The provision of quorum and the number of minimal support of members of the People's Legislative Assembly as provided for in the provision of Article 184 paragraph (4) of Law 27 /2009 is intended in order that the People's Legislative Assembly to obtain major support from members of the People's Legislative Assembly in exercising right to express opinions as actualization of institutional and political legitimacy. On the other side, the requirements of support of the aforementioned minimum of 3/4 aims at strengthening presidential governance system where sovereignty is in the people, so that the government



will not be easily impeached by the People's Legislative Assembly as well as strengthening stable governance and democracy;

**[3.14]** Whereas based on the above description, the main problem which must be answered by the Court is:

1. Is the minimum of 3/4 for quorum and approval of members of the People's Legislative Assembly to exercise right to express opinions of the People's Legislative Assembly inconsistent with the 1945 Constitution?
2. How many is the minimum quorum and approval of members of the People's Legislative Assembly which is allowed by the 1945 Constitution to exercise right to express opinions?

**[3.15]** Whereas before the Court answers both questions, the Court describes the definition, regulation and practice of right to express opinions in Indonesian State Administration in advance. Prior to the amendment of the 1945 Constitution, right to express opinions was the right possessed by the People's Legislative Assembly to express opinions regarding the Government's policy or extraordinary incidents occurring in the fatherland or international. Prior to the amendment, the 1945 Constitution did not acknowledge right to express opinions. However the aforementioned right had been accommodated in various laws regarding rights of the People's Legislative Assembly, such as in Article 32 of Law Number 16 Year 1969 concerning Structure and Status of the People's Consultative Assembly, the People's Legislative Assembly and Regional People's Legislative Assembly granting rights to the People's Legislative

Assembly to express opinions which is the continuity of right to interpellation in the form of memorandum, resolution and/or vote. Likewise in Article 32 of Law Number 2 Year 1985 regarding Amendment to Law Number 16 Year 1969 concerning Structure and Status of the People's Consultative Assembly, the People's Legislative Assembly and Regional People's Legislative Assembly. However, it is affirmed that the exercise of right to express opinions must be performed wisely pursuant to the democracy of *Pancasila* in order that the governance system based on the 1945 Constitution will not be changed. The same provision is found in Article 33 of Law Number 4 Year 1999 concerning Structure and Status of the People's Consultative Assembly, the People's Legislative Assembly, Regional Representatives' Council and Regional People's Legislative Assembly as well as Article 27 of Law Number 22 Year 2003 concerning Structure and Status of the People's Consultative Assembly, the People's Legislative Assembly, the Regional Representatives' Council and the Regional People's Legislative Assembly. In addition to that, Article 75 of the Provisional Constitution Year 1950 adhering to parliamentary governance system shall recognize right of interpellation and right to investigate (*enquete*). The aforementioned various Laws shall not provide for the provision of the requirement of minimum quorum or approval of members of the People's Legislative Assembly, unless shall only be provided for in the People's Legislative Assembly rules of procedure. The provision of quorum or approval of the members to exercise right to express opinions in the aforementioned several rules of procedure of the People's Legislative Assembly is designated with the

presence and approval of members in majority, simply and with maximum presence and approval of 2/3 members (as in the Decision of the People's Legislative Assembly Number 08/DPR RI/I/2005.2006 regarding Rules of Procedure of the People's Legislative Assembly of the Republic of Indonesia). In the practice of Indonesian State Administration prior to Law *a quo*, the People's Legislative Assembly has often exercised right to express opinions to the Government, among other things:

- Right to submit proposal and express opinion about the replacement of Commander in Chief of Indonesian National Army (Session Year 2004-2005);
- Proposal of right to express opinions about the Government's anticipative policy of the increase cost which is cheap and affordable for the community (Session Year 2007-2008);
- Proposal of right to express opinions about the President having committed violation of Law Number 41 Year 2008 regarding State Revenues and Expenditures Budget Year 2009 (Session Year 2008-2009);

**[3.16]** Whereas the amendment to the 1945 Constitution, re-structure of relationship between state institution based on checks and balances is a governance system developed from power separation system between main branches of state power consisting of executive, legislative and judicative power. Checks and balances system wish to have balance and supervise each other between state institutions to avoid absolute power of an institution or state organ.

In relationship between the positions of President as an executive power administrator, the People's Legislative Assembly and Regional Representatives' Council as people's representative institutions continuously supervise any policy and implementation of governance by the President in order to remain in line with the constitution and in spirit as well as the objectives of the state. In this position, important meaning of constitutional guarantee for the People's Legislative Assembly includes in order being able to perform its duties and responsibility to supervise the President as provided for in the constitution;

**[3.17]** Whereas in order to answer the question in paragraph **[3.14]**, the Court is of the opinion as follows:

**[3.17.1]** Whereas the 1945 Constitution following the amendment, it expressly includes the right to express opinions of the People's Legislative Assembly provided for in Article 20A of the 1945 Constitution, as a part of function of supervision by the People's Legislative Assembly. No further description about the mechanism of the exercise of the aforementioned right to express opinions in the 1945 Constitution unless implicitly mandated to be provided for in Law. In addition to that, amendment to the 1945 Constitution also recognizes "the opinion of the People's Legislative Assembly" for the result of its supervision in the frame of proposal of the dismissal of the President and/or the Vice President as provided for in Article 7A and 7B of the 1945 Constitution. According to the Court, even though there is similarity between right to express opinions of the People's Legislative Assembly provided for in Article 20A of the

1945 Constitution and opinion of the People's Legislative Assembly in the frame of the proposal of the dismissal of the President and/or the Vice President provided for in Article 7A and 7B of the 1945 Constitution, namely both are in the frame of supervision by the People's Legislative Assembly over the President, but both provisions have difference. Article 20A of the 1945 Constitution shall only give guarantee of the availability of right of the People's Legislative Assembly to express opinions by excluding any limitation on the procedures and mechanism of exercising such right. The regulation of this matter is provided in Law, while opinion the People's Legislative Assembly in the frame of the proposal of the dismissal of the President and/or the Vice President provided for in Article 7A and 7B of the 1945 Constitution also provides for the mechanism of making the decision, namely conducted in the plenary session attended by a minimum of 2/3 members of the People's Legislative Assembly and approved by a minimum of 2/3 members of the People's Legislative Assembly present. The mechanism of exercising right to express opinions pursuant to Article 20A is open to be provided for in the level of Law, while the opinion of the People's Legislative Assembly provided for in Article 7B is limited. This is in line with the opinion of experts Saldi Isra and Aidul Fitriada Azhari that the requirement of quorum and decision making in the frame of impeachment/dismissal of the President is limited in nature and different delegation regulation to Law is not allowed. In addition to that, the Court also has the same opinion as expert Fajrul Falaakh principally is of the opinion that according to Indonesian state administration, there are two natures of right to express opinion, namely general

(*lex generalis*) as provided for in Article 20A of the 1945 Constitution and special (*lex specialis*) Article 7B of the 1945 Constitution;

**[3.17.2]** Whereas Law 27/2009 shall combine the mechanism of exercising right to express opinion, either originating from Article 20A or Article 7A or Article 7B of the 1945 Constitution, without differentiating the type and point of opinion statement which should be differentiated into *lex specialis* and *lex generalis*. Right to express opinions in Law *a quo* shall include right of the People's Legislative Assembly to express opinions on the Government's policy or extraordinary incidents occurring in the fatherland or international, follow-up of the exercise of right of interpellation and right to inquiry, as well as allegation of violation of Law committed by the President and/or the Vice President, whether in the form of high treason, corruption, bribery, other criminal acts or disgrace acts, and/or the President and/or the Vice President is/are no longer meet the requirement as the President and/or the Vice President. The provision of Article 184 paragraph (4) of the Law *a quo* shall not differentiate all types of right to express opinions of the People's Legislative Assembly either under Article 20A as *lex generalis* or Article 7A and Article 7B of the 1945 Constitution as *lex specialis* providing for that all types of opinion shall only be expressed through the decision of the plenary meeting of the People's Legislative Assembly attended by a minimum of 3/4 members of the People's Legislative Assembly and approved by a minimum of 3/4 members of People's Legislative Assembly present. According to the Court, the generalization of this kind of provision is inconsistent with the intention and spirit of the 1945 Constitution;

**[3.17.3]** Whereas, according to the Court, the People's Legislative Assembly indeed has the freedom of legislation to determine the mechanism of decision making by determining certain requirements, either the requirement of quorum or the requirement of approval of members of the People's Legislative Assembly to the right to express opinions which is general and originating from Article 20A of the 1945 Constitution. However, the People's Legislative Assembly does not have the freedom to provide for the requirement of quorum and the approval of members of the People's Legislative Assembly related to the opinion of the People's Legislative Assembly in the frame of proposal of the dismissal of the President and/or the Vice President to be submitted to the Constitutional Court. Law cannot provide for stricter or less strict requirement based on legislation policy other than the requirement determined by the constitution. The Court does not agree with the point of view of the People's Legislative Assembly principally stating that between both provisions substantially include two different things. Article 7B paragraph (3) of the 1945 Constitution provides for formal requirements for submitting requests of the People's Legislative Assembly of the Republic of Indonesia to the Constitutional Court, while Article 184 paragraph (4) of Law 27/2009 provides for formal requirement of submitting right to express opinions of the People's Legislative Assembly dealing with the performance of function of supervision as intended in Article 20A paragraph (1) and paragraph (2) of the 1945 Constitution. According to the Court, it is impossible to have the opinion of the People's Legislative Assembly dealing with the request of the People's Legislative Assembly to the Constitutional Court in the frame of

proposal of the impeachment of the President without prior approval of the People's Legislative Assembly for the proposal of exercising right to express opinions as provided for in Article 184 paragraph (4) of the Law *a quo*. Accordingly, according to the Court, the provision of Article 184 paragraph (4) of Law 27/2009 particularly related to the proposal of expressing opinion on the allegation of legal violation committed by the President and/or the Vice President whether in the form of high treason, corruption, bribery, other criminal acts or disgrace acts, and/or the President and/or the Vice President is/are no longer meet the requirement as the President and/or the Vice President is not in line with the intention and spirit of the constitution;

**[3.17.4]** Whereas, according to the Court, to make strict of the requirement of right to express opinions of the People's Legislative Assembly by determining the requirement of quorum or the requirement of approval of the decision of the People's Legislative Assembly, at a minimum of 3/4 presence and approval of 3/4 members present, to hinder the constitutional right and authority of the People's Legislative Assembly expressly determined in the constitution. The Court does not agree with point of view of the Government or the People's Legislative Assembly that the strict requirements of quorum or approval members of the People's Legislative Assembly is in the frame of strengthening legitimacy decision of right to express opinions as well as strengthening presidential system. According to the Court, the requirement of the aforementioned quorum and approval causes the People's Legislative Assembly, as a People's Representative institution, is unable to perform its supervision over the President



effectively, so that it is not in line with the checks and balances system adhered in the 1945 Constitution. Along with such regulation, it is very potential to result in the ineffective control by the People's Legislative Assembly over the President. In fact, as stated by Expert Adnan Buyung Nasution, along with the regulation of Article 184 paragraph (4) of the Law *a quo*, the requirements of exercising right to express opinions become much stricter than the requirements needed in the amendment to the 1945 Constitution which is bound with the change of governance system. According to the Court, the procedures and mechanism of the dismissal of the President and/or the Vice President determined in the 1945 Constitution have reflected the strengthening of Presidential system. It is indicated in the process of the dismissal of the President and/or the Vice President which must pass three state institutions, namely the People's Legislative Assembly, the Constitutional Court and the People's Consultative Assembly. Likewise the mechanism of decision making, it must meet the requirements of approval of a minimum of 2/3 members of the People's Legislative Assembly in the plenary session attended by a minimum of 2/3 members of the People's Legislative Assembly. In the level of the People's Consultative Assembly, the requirement of presence is at a minimum of 3/4 members of the People's Consultative Assembly in the plenary session and must be approved by a minimum of 2/3 members present. Such provisions are limited and may not be added or reduced. The idea of limitation by the constitution concerning the requirement and mechanism of expressing opinion about the allegation of violation of certain law or the requirement as a President and/or Vice

President which is no longer met is determined tightly and strictly, so that if it becomes stricter by law, it may result in violation in the process of control over the President/Vice President and is a weakening to the democracy;

**[3.17.5]** Whereas based on the aforementioned description of consideration, the Court is of the opinion that Article 184 paragraph (4) of Law 27/2009 is inconsistent with the 1945 Constitution. According to the Court, the requirement of decision making by the People's Legislative Assembly for the proposal of exercising right to express opinions about the allegation of violation of law committed by the President and/or the Vice President whether in the form of high treason, corruption, bribery, other criminal acts or disgrace acts, and/or the President and/or the Vice President is/are no longer meet the requirement as the President and/or the Vice President shall not exceed the limitation of requirements determined by Article 7B paragraph (3) of the 1945 Constitution. In fact, according to the Court, in the "level of proposal" of exercising right to express opinion, the requirement of decision making by the People's Legislative Assembly must be less strict than the requirement determined by Article 7B paragraph (3) of the 1945 Constitution since in order to be able to follow-up such opinion to the Constitutional Court, it must be through the requirements stricter as provided for in the aforementioned Article 7B paragraph (3) of the 1945 Constitution. Likewise, the proposal of right to express opinions on the Government's policy or extraordinary incidents occurring in the fatherland or international which is strategic in nature and the follow-up of the exercise of right of interpellation and right to inquiry must be less strict than the requirements of

opinion of the People's Legislative Assembly dealing with the submission of request by the People's Legislative Assembly to the Constitutional Court in connection with the process of the dismissal of the President determined in Article 7B paragraph (3) of the 1945 Constitution;

**[3.18]** Whereas due to the inapplicability of the provision of Article 184 paragraph (4) of Law 27/2009, based on this decision of the Court, the provision of simple majority is applicable to the requirements of decision making on the "proposal" of the exercise of right to express opinion;

**[3.19]** Whereas based on all legal consideration described above, the Court is of the opinion that the argument of the petition of the Petitioners is legally founded;

#### **4. CONCLUSION**

Based on the consideration of facts and law above, the Court concluded that:

**[4.1]** The Court has authority authorized to examine, hear and decide upon the petition *a quo*;

**[4.2]** The individual Petitioners have legal standing to file the petition *a quo*, while the Petitioners of members of the People's Legislative Assembly have special legal standing for the petition *a quo* related to constitutional rights exclusively embed in members of People's Legislative Assembly ;

**[4.3]** Arguments of the Petitioners in substance of the case have legal grounds;

Pursuant to the 1945 Constitution of the Republic of Indonesia and in view of Article 56 paragraph (2) of Law Number 24 Year 2003 regarding the Constitutional Court (State Gazette of the Republic of Indonesia Year 2003 Number 98, Supplement to the State Gazette of the Republic of Indonesia Number 4316).

## **5. ORDERS OF DECISION,**

### **Passing the decision,**

#### **Declaring:**

- To grant the petition of the Petitioners entirely;
- Article 184 paragraph (4) of Law Number 27 Year 2009 regarding the People's Consultative Assembly, the People's Legislative Assembly, Regional Representatives' Council and Regional People's Legislative Assembly (State Gazette of the Republic of Indonesia Year 2009 Number 123, Supplement to the State Gazette of the Republic of Indonesia Number 5043) inconsistent with the 1945 Constitution of the Republic of Indonesia;
- Article 184 paragraph (4) of Law Number 27 Year 2009 regarding the People's Consultative Assembly, the People's Legislative Assembly, Regional Representatives' Council and Regional People's Legislative Assembly (State Gazette of the Republic of Indonesia Year 2009 Number

123, Supplement to the State Gazette of the Republic of Indonesia Number 5043) shall not have binding legal force;

- To order the promulgation of this Decision properly in the Official Gazette;

In witness whereof, this decision was made in the Consultative Meeting of Justices on Thursday the sixth of January two thousand and eleven attended by nine Constitutional Court Justices, namely Moh. Mahfud MD, as the Chairperson and concurrent Member, Achmad Sodiki, Muhammad Alim, Hamdan Zoelva, M. Akil Mochtar, Ahmad Fadlil Sumadi, Maria Farida Indrati, Harjono and M. Arsyad Sanusi, respectively as Members and was pronounced in the Plenary Meeting of the Constitutional Court open to the public on Wednesday the twelfth of January two thousand and eleven by us Moh. Mahfud MD, as the Chairperson and concurrent Member, Achmad Sodiki, Muhammad Alim, Hamdan Zoelva, M. Akil Mochtar, Ahmad Fadlil Sumadi, Maria Farida Indrati, Harjono, and M. Arsyad Sanusi, respectively as Members and assisted by Saiful Anwar and Hani Adhani as Substitute Registrar, in the presence of the Petitioners/their attorneys, the People's Legislative Assembly or its representative and the Government of its representative.

**CHAIRPERSON,**

**Moh. Mahfud MD.**

**MEMBERS,**

**Achmad Sodiki**

**Muhammad Alim**

**Hamdan Zoelva**

**M. Akil Mochtar**

**Ahmad Fadlil Sumadi**

**Maria Farida Indrati**

**Harjono**

**M. Arsyad Sanusi**

**SUBSTITUTE REGISTRAR,**

**Sgd.**

**Saiful Anwar**

**Hani Adhani**

