D E C I S I O N

Number: 009-014/PUU-III/2005

FOR THE SAKE OF JUSTICE UNDER THE ONE ALMIGHTY GOD

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA

Examining, hearing and deciding upon constitutional cases at the first and final level, has passed a Decision on the petition for Judicial Review of the Law of the Republic of Indonesia Number 30 Year 2004 concerning Notary Title (hereinafter referred to as the Notary Title Law) against the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution), filed by:

I. Petitioners in Case 009/PUU-III/2005

1. **Indonesian Reform Notary Association (PERNORI)** in this case acting as an individual as well as in the capacity as its General Chairperson, DR. H.M. Ridhwan Indra Romeo Ahadian, S.H., M.M., M.Kn. Notary/Land Deed Official in Bekasi City, having his address at Jl. Usman No. 44, East Jakarta;

2. **Indonesian Notary Association (HNI)** in this case acting as an individual or in the capacity as its General Secretary DR. H. Teddy Anwar, S.H., Notary/Land Deed Official in Central Jakarta, having his address at Jl. Bendungan Hilir 80, Central Jakarta,

hereinafter referred to as **Petitioner I**;

In this case granting a power of attorney to Sophian Martabaya, S.H., H. Marzuki, S.H, Bangun Sidauruk, S.H. by virtue of a Special Power of Attorney dated June 12, 2005.

II. Petitioners in case 014/PUU-III/2005

1. Hady Evianto, S.H., Sp.N., Notary in Bekasi City, having his address at Jl. Citra Niaga 2 Block AJ No.12 Kemang Pratama, Bekasi City 17116;
2. H.M. Ilham Pohan, S.H., Sp.N., Notary in Bekasi Regency, having his address at Grampuri Tamansari Block C 2 No.5 Cibitung, Bekasi Regency;
3. Ukon Krisnajaya, S.H., Sp.N., Notary in Jakarta, having his address at Puri Imperium, Office Plaza UG 16 Metropolitan Kuningan Superblock Jl. HR. Rasuna Said Kav.1, South Jakarta;
4. Yance Budi S.L Tobing, S.H., Sp.N., Notary in Jakarta, having his address at Jl. Elang Malindo I Blok A.5 No. 9 Curug Indah Jatiwaringin, Jakarta 13620;
5. Drs. H.A. Taufiqurrahman S, S.H., Sp.N., Notary in Tangerang Regency, having his address at Kompleks Kejaksaan Agung Block B1/19, Tangerang,

hereinafter referred to as **PETITIONER II**;

Having read the petition of the Petitioners;

Having heard the statement of the Petitioners;

Having heard the statement of the Government;

Having read the written statement of the Government and the People's Legislative Assembly of the Republic of Indonesia;

Having heard the statement of related parties;

Having read the written statement of related parties;

Having heard the statement of Witnesses;

Having heard the statement of Experts;

Having examined the written evidence or writings and documents;

Having read the Conclusion of the Petitioners in Case No.009/PUU-III/2005 and the Conclusion of the Petitioners in Case No.014/PUU-III/2005.

LEGAL CONSIDERATIONS

Considering whereas the purpose and objective of the Petitioners are as mentioned above;

Considering whereas before examining the principal issue of the case, the Constitutional Court (hereinafter the Court) needs to first take the following matters into account:

1. The authority of the Court to examine, hear and decide upon the petition filed by the Petitioners.
2. The legal standing of the Petitioners to file the *a quo* petition.

With regard to the above mentioned two issues, the Court is of the following opinion:

1. Authority of the Constitutional Court

Considering whereas based on Article 24C Paragraph (1) of the 1945 Constitution as reaffirmed in Article 10 Paragraph (1) Sub-Paragraph a of the Law of the Republic of Indonesia Number 24 Year 2003 concerning the Constitutional Court (Constitutional Court Law), one of the authorities of the Court is to conduct judicial review of Laws against the 1945 Constitution (the 1945 Constitution). Based on Article 51 Paragraph (3) Sub-Paragraphs a and b of the Constitutional Court Law, the judicial review includes formal review and substantive (material) review of the laws concerned;

Considering whereas the petition of the Petitioners in Case Number 009/PUU-III/2005 as well as in Case Number 014/PUU-III/2005 is concerned with the formal review and substantive review of the Law of the Republic of Indonesia Number 30 Year 2004 concerning Notary Title (The Notary Title Law). Therefore, in accordance with the provisions set forth in Article 24C Paragraph (1) of the 1945 Constitution, Article 10 Paragraph (1) Sub-Paragraphs a and b and Article 51 Paragraph (3) Sub-Paragraphs a and b of the Constitutional Court Law, the Court has the authority to hear the petition of the *a quo* Petitioners;

2. Legal Standing of The Petitioners

Considering whereas pursuant to the provision of Article 51 Paragraph (1) of the Constitutional Court Law, the Petitioners are the parties who deem that their constitutional rights and/or authorities have been impaired by the coming into effect of a law, namely: a) individual Indonesian citizens (including groups of people having a common interest); b) units of customary law communities insofar as they are still in existence and in accordance with the development of the community and the principle of the Unitary State of the Republic of Indonesia regulated in law; c) public or private legal entities; or; d) state institutions;

Considering whereas in its Decision for Case Number 006/PUU-III/2005 and Case Number 010/PUU-III/2005 pronounced in a Plenary Session open for the public on May 31, 2005, the Court is of the opinion that the impairment arising due to the coming into effect of a law, pursuant to Article 51 Paragraph (1) of the Constitutional Court Law, shall fulfill the following 5 (five) requirements:

a. The petitioners must have constitutional rights granted by the 1945 Constitution;
b. the Petitioners believe that their constitutional rights to have been impaired by the coming into effect of a law;
c. the impairment of such constitutional rights shall be specific and actual in nature or at least potential in nature which, pursuant to a logical reasoning, will take place for sure;
d. there is a causal relationship (*causal verband)* between the impairment of the constitutional rights and the law petitioned for review;

e. there is a possibility that upon the granting of a petition, the impairment of the constitutional rights argued will not or do not occur any more;

Considering whereas the Petitioners in Case Number 009/PUU-III/2005 (Petitioners in Case 009), namely DR. H. M. Ridhwan Indra RA., S.H., M.H., M.Kn., and DR. H. Teddy Anwar, S.H., argue that they are individual citizens and are respectively the Chairperson of the Indonesian Reform Notary Association (PERNORI) and the Secretary General of the Indonesian Notary Association (HNI) pursuant to the Articles of Associations of PERNORI and the Power of Attorney from the Chairperson of the Central Executive Board of HNI, acting on behalf of PERNORI and HNI. Therefore, in their position as individual citizens and on behalf of PERNORI and HNI, they can be deemed as being a group of people having a common interest, in this respect, the Notaries who are members of PERNORI and HNI, so that they have met the provision of Article 51 Paragraph (1) Sub-Paragraph a of the Constitutional Court Law and its Elucidation;

Considering whereas the Petitioners in Case Number 014/PUU-III/2005 (Petitioner in Case 014), namely Hadi Evianto S.H., Sp.N., and colleagues, 5 (five) persons, claim that they are individual citizens and Notaries. With such position as individual citizens and as a group of people (in this case as Notaries) having a common interest, they have met the provision of Article 51 Paragraph (1) Sub-Paragraph a of the Constitutional Court Law and its Elucidation;

Considering whereas the Petitioners 009 and 014, argue that the Petitioners have constitutional rights as ser forth in the 1945 Constitution, namely, among others, such rights set forth in:

a. Article 28E Paragraph (3) which reads as follows:

   "Every person shall have the right to the freedom of association, assembly, gather, and expression of opinions"

b. Article 28D Paragraph (1) which reads as follows:

   "Every person shall have the right to the recognition, the guarantee, the protection and the legal certainty of just laws as well as equal treatment before the law".

The Petitioners claim that the aforementioned constitutional rights have been impaired by the coming into effect of the Notary Title Law, particularly Article 1 Sub-Article 5 *juncto* Article 82 Paragraph (1) which impair the right to the freedom of association; Article 15 Paragraph (2) Sub-Paragraphs f and g which impair the right to the legal certainty guarantee, and Article 67 Paragraphs (1) through (6) which impairs the right to equal treatment before law;

The Petitioners argue that such constitutional impairments are *specific*, being only applicable to Notaries and have occurred (factual) among others, with the rejection of the application of the Petitioners for the registration of HNI as a legal entity at the Ministry of Law and Legislations (presently the Ministry of Law and Human Rights), and that it is potential that the Ministry of Law and Human Rights will reject similar applications filed by Notary organizations other than HNI.

If the petition of the Petitioners is granted by the Court, the impairments suffered and predicted by the Petitioners will not or do not occur any more;

Pursuant to the above description, the Court considers that the petition of the Petitioners in Case 009 and Case 014 is sufficiently grounded, so that the Petitioners are deemed to have the legal standing in the *a quo* petition;

Considering whereas since the Court has the authority to examine, hear and decide upon the *a quo* petition, and the Petitioners have the legal standing, the Court will further consider the principal issue of the case;

3. Principal Issue of the Case

Considering whereas in the substance of the petition, the Petitioners in both Case 009 and Case 014 filed the petition for the judicial review of the Notary Title Law, both formal and substantive review with the arguments which will be taken into account by the Court together with the consideration of the statements of the Government, the People's Legislative Assembly, and the Related Parties as well as evidence as described as follows;

Formal Review

Considering whereas in the petition for formal review, the Petitioners in Case 009 argue that the formulation of the Notary Title Law was not in accordance with the provision of Article 22A of the 1945 Constitution as described in the Law of the Republic of Indonesia Number 10 Year 2004

concerning Formulation of Laws and Regulations (Regulation Law) particularly Article 5 and Article 6 of the Regulation Law;

Whereas with respect to the relation between the Regulation Law and the 1945 Constitution, the Court is of the following opinion:

The “In view of” Consideration of the Regulation Law mentions Article 20, Article 21 and Article 22A of the 1945 Constitution.

Article 20 of the 1945 Constitution reads as follows:

”(1) The People’s Legislative Assembly shall have the power to make law.

(2) Every draft law shall be discussed by the People’s Legislative Assembly and the President to obtain a joint approval.

(3) If the draft law does not obtain a joint approval, it must not be re-submitted during the same session of the People’s Legislative Assembly.

(4) The President shall ratify the draft law which has obtained a joint approval to become a law.

(5) In the event that the draft law which has obtained a joint approval is not ratified by the President within thirty days as from the time such draft law is approved, the draft law shall legally become a law and must be enacted”.

Article 21 of the 1945 Constitution reads:

"Members of the People's Legislative Assembly shall have the right to propose draft laws".

Article 22A of the 1945 Constitution reads:

"Further provisions concerning the procedures for the formulation of laws shall be regulated by law".

2. Meanwhile, in the context of implementing Article 22A of the 1945 Constitution, the Regulation Law states the following matters:

   - Concerning the purpose of the enactment of the Regulation Law, the second paragraph of the General Elucidation states:

     "……to formulate good laws and regulations, various requirements are needed in relation to the materials, principles, procedures for preparation and discussion, drafting techniques and application".

   - Concerning the definition of Formulation of Laws and Regulations, Article 1 Sub-Article 1 of the Regulation Law states:

     "The formulation of Laws and Regulations basically starts from planning, preparation, drafting techniques, discussion, ratification, enactment, and dissemination".

3. Based on the aforementioned quotations it can be concluded that the Regulation Law has been enacted for the purposes of conformity of the law making process, in substantial respect, with the provisions of Article 20A and

Article 21 of the 1945 Constitution on the one hand, and in technical respect to qualify as a good Law on the other hand;

Although Article 20 and Article 21 of the 1945 Constitution seem to merely regulate the law making process, such articles also provide for the authorities of the People's Legislative Assembly, the President, and the members of the People's Legislative Assembly in the proposal, approval, ratification, and enactment;

Therefore if a law does not fulfill the provisions for the formulation process set forth in Article 20 and Article 21 of the 1945 Constitution as subsequently provided for in the Regulation Law, such Law is, in formal respect, contradictory to the 1945 Constitution, so that it can be declared as having no binding legal effect;

In addition to describing Article 20 and Article 21 of the 1945 Constitution, the Regulation Law also provides directives or guidelines concerning good law drafting techniques, by stipulating definite and standard ways and methods as referred to in the "Considering" Consideration section of the Regulation Law. Accordingly, a law which does not meet technical requirements for a good law formulation (*behoorlijke wetgeving*) is not necessarily contradictory in formal respect to the 1945 Constitution;

Whereas, in their written testimony, the Related Parties of the Indonesian Notary Union (INI) state that although the Regulation Law came into effect at the

time it was enacted (June 22, 2004), the implementation of the Regulation Law pursuant to Article 58 of the Regulation Law, begun on November 1, 2004, while the Notary Title Law came into effect at the time it was enacted, namely on October 6, 2004. Thus, the provisions of the Regulation Law can not be applied to the Notary Title Law;

With respect to the aforementioned statement of INI, the Court is of the opinion that the difference between enactment time and effective time of a law as in the *a quo* law, is justifiable. It is necessary to prepare the implementation of the law concerned and it is in accordance with Article 50 of the Regulation Law which states as follows, “Laws and regulations shall come into effect and have binding force on the enactment date unless otherwise specified in the laws and regulation concerned”;

Considering whereas the Petitioners in Case 009 argue that the Notary Title Law contains legal defects because its formulation is suspected to have involved a criminal act of bribery and that the Petitioner (DR. A. Ridhwan Indra RA, S.H, M.M, M.Kn.) has reported the matter to the Corruption Eradication Commission. However, in his revised petition dated April 15, 2005, the Petitioner withdrew such argument;

Considering whereas pursuant to Article 10 of the Constitutional Court Law, the Court does not have the authority to examine, hear, and decide upon cases of criminal acts in the law formulation process. However, in accordance with the provision of Article 16 Paragraph (2) of Constitutional Court Regulation

Number 06/PMK/2005 concerning Guidelines for Judicial Review Proceedings (PMK Number 06/PMK/2005), if the Petitioner can show sufficient evidence concerning the occurrence of a criminal act of corruption in the formulation of a law, the Court can temporarily terminate the examination of the petition or to adjourn the decision and notify the competent authorities to follow up the suspicion of the criminal act concerned. In addition, the Government, in its written statement received by the Registry Office of the Constitutional Court on June 14, 2005 states that the Corruption Eradication Commission (KPK) has given a clarification that no such criminal act of corruption occurred in the discussion of the Notary Title Law. Such matter was not denied by the Petitioners in the session as it should have been, so that there is no sufficient reason for the Court to consider the application of the above mentioned Article 16 Paragraph (2) of the Constitutional Court Regulation (PMK);

Considering whereas based on the above considerations, the Court is of the opinion that the arguments presented by the Petitioners, insofar as concerning the formal review, are not based on sufficient grounds;

Substantive Review

Considering whereas in the petition for judicial review of the Notary Title Law against the 1945 Constitution, the Petitioners in Case 009, argue that Article 1 Sub-Article 5, Article 3 Sub-Article d, Article 8 Paragraph (3), Article 15 Paragraph (2) Sub-Paragraph f, Article 15 Paragraph (2) Sub-Paragraph g, Article 67 Paragraph (1) through Paragraph (6) *juncto* Article 25 Paragraph (2),

Article 26 Paragraph (1) and Paragraph (2), Article 77, and Article 82 Paragraph (1) of the Notary Title Law are contradictory to the 1945 Constitution. Meanwhile, the Petitioners in Case 014, argue that Article 1 Sub-Article 5 *juncto* Article 82 Paragraph (1) and Article 16 Paragraph (1) Sub-Paragraph k of the Notary Title Law are contradictory to the 1945 Constitution;

Considering whereas to support their arguments, the Petitioners in Case 009 and the Petitioners in Case 014, in addition to filing written evidence in the forms of letters/documents (PI-1 through PI-26) and (PII-1 through PII-31), also presented experts who principally support the Petitioners' arguments. The experts' verbal statement and written statement are completely set out in the description regarding the principal issue of the case;

Considering whereas the People's Legislative Assembly (DPR) and the Government have given their verbal statement and written statement, which principally refuse the Petitioners' arguments as completely set out in the description regarding the principal issue of the case;

Considering whereas Related Party namely INI, has given its verbal statement and written statement, which principally refuse the Petitioners' arguments. The verbal statement and written statement of INI are completely set out in the description regarding the principal issue of the case;

Considering whereas PERNORI and HNI as organizations have given their statements in the hearing which principally support the Petitioners'

arguments, as completely set out in the description regarding the principal issue of the case;

Considering whereas based on the foregoing, the Court is of the following opinion:

Petition of the Petitioners in Case 009

.1 Article 1 Sub-Article 5.

Article 1 Sub-Article 5 of the Notary Title Law reads as follows,

“Notary Organization shall be a professional organization of Notary Titles in the form of an incorporated association.”

The Petitioners deem that this article has been intentionally made by the legislators for the interest of INI, because so far INI has been the only Notary organization which has the status of an incorporated legal entity.

Other Notary Organizations, including PERNORI and HNI which are managed by the Petitioners, up to the present time have not had the status of legal entity, because the request to obtain legal entity status was rejected or was not served by the Department of Law and Human Rights, because the Department of Law and Human Rights has stipulated INI as “one Notary Organization forum”, as intended in Article 82 Paragraph (1) of the Notary Title Law.

On such basis the Petitioners deem that Article 1 Sub-Article 5 *juncto* Article 82 Paragraph (1) is contradictory to Article 28E Paragraph (3) of the 1945 Constitution which reads as follows: "Every person shall have the right to the freedom of association, assembly, and expression of opinions", and Article 28G Paragraph (1) of the 1945 Constitution which reads as follows, "Every person shall have the right to the protection of himself, his family, honor, dignity, and assets under his control, and shall have the right to feel safe and be protected from the threat of to do, or not to do something which constitutes a human right".

Considering whereas with respect to the Petitioners' arguments above, the Court will first consider whether Article 1 Sub-Article 5 of the Notary Title Law is contradictory to Article 28E Paragraph (3) of the 1945 Constitution, while the connection between Article 1 Sub-Article 5 and Article 82 Paragraph (1) of the Notary Title Law will be considered later;

Considering whereas Notary is a profession as well as public official that performs some of the government's duties, as regulated in Chapter III of the Notary Title Law including authorities, obligations, and prohibitions for a Notary. Therefore it is not only reasonable, but it is also obligatory that a Notary Organization which is a professional association of Notaries as public officials shall be independent in legal intercourse

(*rechtsverkeer*). Therefore, the requirement for a Notary Organization to be a legal entity (*rechtspersoon*) is appropriate;

Considering whereas based on to the above consideration, the provision of Article 1 Sub-Article 5 of the Notary Title Law is not contradictory to the 1945 Constitution, and therefore the petition of the Petitioners concerning this matter is not based on sufficient grounds;

2. Article 3 Sub-Article d, Article 8 Paragraph (3), and Article 12 Paragraph (2) Sub-Paragraph f and Sub-Paragraph g

Although not specified in the petition, the Petitioners mention Article 3 Sub-Article d, Article 8 Paragraph (3), and Article 15 Paragraph (2) Sub-Paragraph f and Sub-Paragraph g of the Notary Title Law. Thus, the Court deems it necessary to consider them as follows:

a. Article 3 Sub-Article d reads as follows, “Physically and mentally healthy”. According to the Petitioners such requirement must be more detailed, for example by stating that a Notary must not be blind, mute, or having handicapped hand which make him/her unable to affix signatures. Towards the aforementioned Petitioners’ arguments, the Court is of the opinion that the wording as intended in Article 3 Sub-Article d has been adequate, especially with the existence of Article 14 of the Notary Title Law which reads as follows, “Further provisions regarding conditions and procedures for the appointment and dismissal

as intended in Article 3, Article 8, Article 9, Article 10, Article 11, Article 12, and Article 13 shall be regulated in a ministerial regulation".

b. **Article 8 Paragraph (3) [*sic!*], which should be Article 8 Paragraph (2) reads as follows**, "The age requirement as intended in Paragraph (1) Sub-Paragraph b can be extended up to 67 (sixty-seven) years by considering the health of the person concerned". According to the Petitioners the article is incomplete because it does not specify detailed consideration underlying such extension. The Court is of the opinion that the requirement for such an extension is included in the scope of procedures for the appointment and dismissal of Notaries as stated in the aforementioned Article 14 of the Notary Title Law.

c. **Article 15 Paragraph (2) Sub-Paragraph f reads as follows**, "A Notary shall make land-related deeds...". According to the Petitioners this article will cause legal uncertainty, because:

(1) There are some other public officials who have the authority to make land deeds namely Land Deed Official (PPAT) [*please refer to* Article 1 Paragraph (4) of Law Number 4 Year 1996 concerning Security Right, Article 10 Paragraph (2) of Law Number 16 Year 1985 concerning Condominium, and Article 24 of Law Number 21 Year 1997 as amended by Law Number 21 Year 2001 concerning Fees for Land/Building Title Assignment].

(2) The Laws referred to in item 1) above were not revoked by the Notary Title Law.

(3) It is worried that the National Land Agency (BPN) will only receive land-related deeds made by Land Deed Officials, and will not receive deeds made by Notaries.

Having considered the Petitioner's arguments in the above formal review and as the articles concerned are not petitioned in the petition, the Court will not consider such arguments any further. This consideration shall, also apply *mutatis mutandis* to Article 15 Paragraph (2) Sub-Paragraph g.

d. Article 67 Paragraph (1) through Paragraph (6)

Considering whereas Article 67 of the Notary Title Law reads as follows,

(1) Supervision on Notaries shall be conducted by the Minister.

(2) In conducting the supervision as referred to in Paragraph (1) the Minister shall establish a Supervisory Council.

(3) The Supervisory Council as referred to in Paragraph (2) shall consist of 9 (nine) persons, from the following elements:

a. 3 (three) persons from the Government;

b. 3 (three) persons Notary Organization; and

c. 3 (three) persons of experts/academicians.

(4) In the event that a region has no government institution element as referred to in Paragraph (3) Sub-Paragraph a, the membership in the Supervisory Council shall be filled by another element appointed by the Minister.

(5) The Supervision as referred to in Paragraph (1) shall include Notary's conduct and implementation of the Notary title.

(6) The provisions regarding the supervision as referred to in Paragraph (5) shall apply to Substitute Notary, Special Substitute Notary, and Temporary Notary Official.

Whereas according to the Petitioners, the article is contradictory to the 1945 Constitution particularly Article 27 Paragraph (1) which reads as follows, "All citizens shall have equal status before the law and in government without any exception", and Article 28G Paragraph (1) of the 1945 Constitution which reads as follows, "Every person shall have the right to the protection of himself, his family, honor, dignity, and assets under his control, and shall have the right feel safe and be protected from the threat of fear to do, or not to do something, which constitutes a human right".

Whereas since the 3 (three) members out of 9 (nine) members of the Supervisory Council are from Notary Organization, and that only the Indonesian Notary Union (INI) is acknowledged as a Notary Organization, the Petitioners are concerned about the

objectivity of treatment by Notaries who are the members of the Supervisory Council towards Notaries having any conflict of interest with the Notaries who are the members of the Supervisory Council;

With respect to the above Petitioners' argument, the Court considers that their concern regarding the objectivity of the members of the Supervisory Council from the Notary Organization is unnecessary.

It is impossible for the members of the Supervisory Council who are from the Notary Organization to act arbitrarily because there are only 3 (three) of them, while the Supervisory Council consists of 9 (nine) persons, so that it is impossible to insist personal and group interest because there are 6 (six) members other than the members from the Notary element;

On the contrary, the presence of 3 (three) members of the Supervisory Council from the Notary Organization will produce more comprehensive and realistic Decisions of the Supervisory Council because the three Notaries have not only a better understanding but also a better feeling and experience in the professional culture among the Notary community. In addition, their appointment by the Notary Organization has certainly been preceded by selection so that only Notaries having a tested

personal integrity and capability as well as independent and impartial attitude are eligible;

Accordingly, all Notaries shall be equally treated and given equal opportunity to become the members of the Supervisory Council, upon going through the selection therefor so that Article 67 of the Notary Title Law is not contradictory to Article 27 Paragraph (1) and Article 28G Paragraph (1) of the 1945 Constitution. Based on the aforementioned consideration, the Court is of the opinion that the arguments presented by the Petitioners regarding the matter are not based on sufficient grounds;

Considering whereas in accordance with the provision of Article 67 Paragraph (1) of the Notary Title Law, the supervision on Notaries is performed by the Minister. The subsequent Article 67 Paragraph (2) of the Notary Title Law states that in conducting the control as referred to in Paragraph (1), the Minister shall establish a Supervisory Council. Therefore the Supervisory Council is not subordinate to the Notary Organization, but is an institution that serves to assist the Minister in conducting the supervision on Notaries. Or in other words the Supervisory Council is the extension of the Minister. In the context of supervision, it is normal that the Supervisory Council receives the delegation of some of Minister’s authorities as set forth in Article 77 and Article 78 of the

Notary Title Law. Article 77 of the Notary Title Law provides the guidelines on how the Supervisory Council shall perform its duties and authorities as follows: “the Supervisory Council shall have the authorities to:

a. Hold hearings to examine and decide in the appellate level upon the imposition of sanctions and rejection of leave;
b. Summon a reported Notary for an examination as referred to in Sub-Article a;
c. Impose temporary discharge sanctions; and
d. Propose sanctions in the form of dishonorable discharge to the Minister”.

Article 78 of the Notary Title Law reads as follows,

(1) The examination in the hearing of the Central Supervisory Council as referred to in Article 77 Sub-Article a shall be open to public.
(2) The Notary shall have the right to self-defense in the hearing of the Central Supervisory Council”.

Considering, the Petitioners deem that the authorities granted to the Supervisory Council in both *a quo* articles are excessive and contradictory to Article 27 Paragraph (1) of the 1945 Constitution, which reads as follows, “All citizens shall have equal

status before the law and in government without any exception", and Article 28G Paragraph (1) of the 1945 Constitution which reads as follows, "Every person shall have the right to the protection of himself, his family, honor, dignity, and assets under his control, and shall have the right feel safe and be protected from the threat of fear to do, or not to do something, which constitutes a human right".;

The above mentioned examination hearing shall be conducted in a manner open for the public and the Supervisory Council must hear to the statement of the reported notary and give him an opportunity to defend himself. This indicates that the examination process for the decision making conducted by the Supervisory Council has reflected an objective, fair and open process, so that there is no such discriminatory treatment;

Likewise, the authorities of Supervisory Council to impose temporary discharge sanction (*please refer to* Article 77 Sub-Article c) and to propose the imposition of sanction in the form of dishonorable discharge (*please refer to* Article 77 Sub-Article d), are delegated authorities as a judicial consequence of a duty imposed by the *a quo* Law to the Supervisory Council;

The temporary discharge imposed by the Supervisory Council while waiting for the Ministerial decision on the proposal for

dishonorable discharge is an important action. On one hand, it is needed to prevent unwanted actions by the reported notary during the time frame, and on the other hand to prevent arbitrary acts of the Supervisory Council. Temporary discharge and proposal for dishonorable discharge constitute state administrative actions (*administratief rechtshandeling*);

Based on the above consideration, the Court is of the opinion that Articles 77 and 78 of the Notary Title Law are not contradictory to Article 27 Paragraph (1) and Article 28G of the 1945 Constitution;

e. Article 82 Paragraph (1)

Considering whereas the Petitioners argue that Article 82 Paragraph (1) which reads as follows, “Notaries shall gather in one Notary Organization forum”, is contradictory to Article 22A, Article 28E Paragraph (3) and Article 28 G Paragraph (1). Article 22A of the 1945 Constitution reads as follows, “Further provisions concerning the procedures for the formulation of laws shall be regulated by law”. Article 28E Paragraph (3) reads as follows, “Every person shall have the right to the freedom of association, assembly, and expression of opinions”;

Considering whereas the issue of whether or not there is a contradiction between the Notary Title Law, including Article 82 Paragraph (1) and Article 22A of the 1945 Constitution, has been considered in the above Formal Review part. Whereas regarding the issue of whether or not there is a contradiction between Article 82 paragraph (1) of the Notary Title Law and Article 28E Paragraph (3) and Article 28G Paragraph (6) of the 1945 Constitution, the Court is of the following opinion:

Whereas Article 82 Paragraph (1) of the Notary Title Law does not prohibit any person who practices the Notary Title profession from assembling, associating and expressing opinions. However, in exercising the right to association, they must gather under one notary organization forum, because a Notary is a public official appointed by the state, granted with certain duties and authorities by the state in the context of serving the public interest, namely making authentic deeds. Such duties and authorities granted by the state must be performed as properly and accurately as possible, because any mistakes, not to mention abuses, conducted by Notaries can disrupt legal certainty, and can cause other unnecessary losses;

Therefore, continuous guidance, development and supervision efforts are needed so that all notaries can improve the

quality of public service. For such purpose only one forum (sole forum) of notary organization with one code of ethics and one standard of public service quality is needed. With only one notary organization forum, it will be easier for the Government to conduct supervision on the holders of notary profession who are given the duties and authorities as public officials;

Referring to the consideration of Case Number 066/PUU-II/2004 in Judicial Review of the Law of the Republic of Indonesia Number 1 Year 1987 concerning Indonesian Chamber of Commerce (Kadin) the decision of which was pronounced in a Plenary Session open for the public on April 12, 2005, the Court considers that the notary is a state body in a general sense, although not in the sense of an institution as commonly referred to in daily conversations, and thus the state has an interest in the existence of a sole notary organization forum;

Considering whereas as a comparison, as stated by the Government as well as the Related Party (INI), almost all countries have one Notary organization forum. For example, Article 60 *Wet op het Notaries Ambt* (1999) states as follows, "*de koninklijke Notariele Beroeps organisatie is een openbaar lichaam in de zin van artikel 134 van de Grondwet. Alle in Nederlands gevestigde*

notarissen en de Kandidaat notarissen zijn leden van de KNB, De KNB is gevestigde te 'Gravenhage";

Considering whereas the connection between Article 82 Paragraph (1) and Article 1 Sub-Article 5 of the Notary Title Law with respect to the requirement for a notary organization to have a legal entity status, as described above, the Court is of the opinion that the legal entity status of a notary organization as a forum for Notaries who serve as public officials was intentionally created for the organization to be independent. Therefore, the conflict of interests between the organization and administrators and organization members can be minimized for a more objective, authoritative and reliable performance of the organization;

Considering whereas the Notary Title Law does not mention that the Notary Organization as the single forum is the Indonesian Notary Union (INI). If in fact the Government stipulates INI as the sole forum of Notary organization as referred to in Article 82 Paragraph (1) of the Notary Title Law, this provision is not in the normative domain of the law, but in the implementation domain of the law, so that it does not pertain to an issue of constitutionality. If the Petitioners are not satisfied with the decision or further regulation as the implementation of the law, the Petitioners can take a legal measure, but not to the Constitutional Court because,

pursuant to Article 10 of the Constitutional Court Law, the Court does not have the authority to examine, hear and decide upon such a case;

Considering whereas based on the above considerations the arguments presented by the Petitioners 009 are not based on sufficient grounds;

B. Petition of the Petitioners in Case 014

Considering whereas in the petition for the judicial review of the Notary Title Law against the 1945 Constitution, the Petitioners 014, argue that Article 1 Sub-Article 5 *juncto* Article 82 Paragraph (1) and Article 16 Paragraph (1) Sub-Paragraph k of the Notary Title Law are contradictory to the 1945 Constitution:

Considering whereas the Court's considerations on Article 1 Sub-Article 5 *juncto* Article 82 Paragraph (1) which have been described in Case Number 009 shall, also apply, *mutatis mutandis* to this Case Number 014;

Considering Article 16 Paragraph (1) Sub-Paragraph k of the Notary Title Law which states that in performing his/her title a notary must "have a stamp/seal with the symbol of the Republic of Indonesia inscribed therein and with the related name, title and domicile indicated in the circling space around the symbol", which, according to the Petitioners, is contradictory to Article 36A *juncto* Article 36C of the 1945 Constitution. Article 36A reads as follows, "The State Symbol shall be *Garuda Pancasila* with the motto of *Bhinneka Tunggal Ika* (Unity

in Diversity)". Article 36C of the 1945 Constitution reads as follows, "Further provisions concerning the National Flag, Language and the State Symbol, as well as national anthem shall be regulated by law";

According to the Petitioners, there has been no such law as referred to in Article 36C of the 1945 Constitution particularly concerning the State Symbol. There is only Government Regulation Number 66 Year 1951 concerning the State Symbol *juncto* Government Regulation Number 43 Year 1958 concerning the Use of the State Symbol. Article 1 of Government Regulation Number 66 Year 1951 reads as follows, "(1) the Garuda Bird, that turns its head straight to the right; (2) the Shield in the form of heart which is hung by a chain to Garuda's neck; (3) the Motto written on a ribbon gripped by Garuda"; and the Use of the State Symbol pursuant to Article 7 of Government Regulation Number 43 Year 1958 reads as follows, "(1) official stamp with the State Symbol therein shall only be allowed for the stamps of the President, Vice President, Chairperson of the People's Legislative Assembly, Chairperson of the *Constituante*, Chairperson of the National Council, Chief Justice of the Supreme Court, the Attorney General, Chairperson of Fiscal Auditing Board, Heads of Regions from Regent Level and above and Notaries, (2) Official stamp with National Symbol therein shall only be allowed for head offices of the Officials mentioned in Paragraph (1); (3) The State Symbol can be used in the official letter of the President, Vice President, Ministers, Chairperson of the People's Legislative Assembly, Chairperson of the Constituante, Chairperson of the National Council, Chief Justice of the Supreme Court, the Attorney General, Chairperson of Fiscal Auditing Board,

Governors/Heads of Regions and equal Heads of Regions of equivalent level, Director of Presidential Cabinet and Notaries.";

Whereas the use of official stamp which/seal with the state symbol indicated therein by notary being regulated in a law, while the use of the state symbol by state officials being regulated only in a Government Regulation is, according to the Petitioners, inadequate;

With respect to the Petitioners' judgment concerning such inadequacy, the Court is of the opinion that it is merely a subjective judgment of the Petitioners which can not be made as the basis for legal considerations. Moreover, in the hearing the Petitioners admitted that their petition in relation to Article 16 Sub-Article k was only motivated by an uncomfortable feeling because notaries seem to get a more special treatment than state officials in respect of the use of the state symbol. In the hearing the Petitioners also admitted that the coming into effect of Article 16 Sub-Article k does not cause either moral or material losses to the Petitioners, except for the above mentioned uncomfortable feeling;

The Court is of the opinion that the provision of Article 16 Sub-Article k of the Notary Title Law which regulates the use of the state symbol by notaries in a law, is not contradictory to the intention of Article 36C of the 1945 Constitution insofar as it is used in the context of implementing their duties as public officials. Meanwhile, beyond the duty as public official, the use of stamp with the state symbol therein is not included in the scope of implementation of Article 16 Sub-Article k of the Notary Title Law. It is true that Article 36C of the 1945 Constitution

mandates that the state symbol must be regulated by a separate law. However, without any intention to state that the regulation as referred to in Article 16 Sub-Article k of the Notary Title Law is the implementation of Article 36C of the 1945 Constitution, the Court is of the opinion that such provision is not contradictory to Article 36C of the 1945 Constitution, so that the Petitioners' arguments are groundless;

Considering whereas based on the above mentioned considerations, the arguments of Petitioners in Case 009 and Petitioners in Case 014 are not based on sufficient grounds, and therefore the petition of the Petitioners must be rejected;

In view of Article 56 Paragraph (5), of the Law of the Republic of Indonesia Number 24 Year 2003 concerning the Constitutional Court:

PASSING THE DECISION

To declare that the petition of the Petitioners **is rejected**.

Hence the decision was made in the Consultative Meeting of 9 (nine) Constitutional Court Justices Prof. Dr. Jimly Asshiddiqie, S.H., as the Chairperson and concurrent Member, accompanied by: Prof. Dr. H. M Laica Marzuki, S.H., Prof. H. A.S. Natabaya, S.H., LL.M., H. Achmad Roestandi, S.H., Soedarsono, S.H., Dr. Harjono, S.H., MCL., Prof. H. A. Mukthie Fadjar, S.H., M.S., Maruarar Siahaan, S.H., and, I Dewa Gede Palguna, S.H. M.H. on Monday, September 12, 2005 and was pronounced in the Plenary Session of the

Constitutional Court open for public on this day Tuesday, September 13, 2005, by 8 (eight) Constitutional Court Justices, assisted by Ina Zuchriyah, S.H. and Fadzlun Budi SN,S.H.,M.Hum as Substitute Registrars, and in the presence of the Petitioners/their Attorneys-in-Fact, the Government, the People's Legislative Assembly, and Related Parties/their Attorneys-in-Fact.

CHIEF JUSTICE,

Prof. Dr. Jimly Asshiddiqie S.H.

JUSTICES

Prof. H.A.S. Natabaya, S.H, LL.M. **Soedarsono, S.H.**

Prof. H. Abdul Mukthie Fadjar, S.H., M.S. **Maruarar Siahaan, S.H.**

I Dewa Gede Palguna, S.H., M.H.

Substitute Registrars

Ina Zuchriyah, S.H **Fadzlun Budi SN, S.H., M.Hum**

Tuesday, September 13, 2005, by 8 (eight) Constitutional Court Justices, assisted by Ina Zuchriyah, S.H. and Fadzlun Budi SN,S.H.,M.Hum as Substitute Registrars, and in the presence of the Petitioners/their Attorneys-in-Fact, the

Government, the People's Legislative Assembly, and Related Parties/their Attorneys-in-Fact.

CHIEF JUSTICE,

Prof. Dr. Jimly Asshiddiqie S.H.

JUSTICES

PROF. H.A.S. NATABAYA, S.H, LL.M.	**Soedarsono, S.H.**
H. Achmad Roestandi, S.H.	**Dr. H. Harjono, S.H., M.C.L.**
Prof. H. Abdul Mukthie Fadjar, S.H., M.S.	**Maruarar Siahaan, S.H.**

I Dewa Gede Palguna, S.H., M.H.

Substitute Registrars

Ina Zuchriyah, S.H	**Fadzlun Budi SN, S.H., M.Hum**