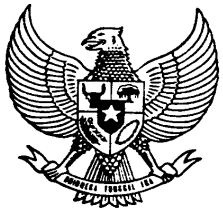

DECISION

Number 024/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 in the case of petition for judicial review of Law of the Republic of Indonesia Number 32 Year 2004 on the Regional Government (hereinafter referred to as the Regional Government Law) against the Constitution of the State of the Republic of Indonesia Year 1945 (hereinafter referred to as the 1945 Constitution) filed by;

Drs. H. Muhammad Madel, M.M., having its address at Jl. Merdeka No. 53, Pasar Sarolangun Sub-District, Sarolangun Regency, Jambi Province who based on a Power of Attorney dated November 19, 2005, who has authorized **1. Suhardi Somomoeljono, S.H., 2. Erman Umar, S.H., 3. Dominggus M. Luitnan, S.H., 4. Vasco Hendrik F. Siregar, S.H.,** respectively Advocates at the Law Office of Suhardi Somomoeljono, S.H & Associates, with its address at Golden Centrum

Building Jl. Majapahit No. 26 AF Central Jakarta, acting for and on behalf of **Drs. H. Muhammad Madel, M.M;**

hereinafter referred to as **PETITIONER;**

LEGAL CONSIDERATIONS

Considering whereas that the purpose and objective of the Petitioner's petition are as referred to in the foregoing;

Considering whereas prior to further considering the substance of Petitioner's petition, the Constitutional Court (hereinafter referred to as the Court) shall first take the following matters into account:

- First, whether the Court has the authority to examine, hear, and decide upon the *a quo* petition;
- Second, whether the Petitioner has the legal standing to act as Petitioner in the *a quo* petition;

In respect of the above mentioned two issues, the Court is of the following opinion:

1. Authority of the Court

Considering whereas, concerning the authorities of the Court, Article 24C Paragraph (1) of the 1945 Constitution among other things states that the

Constitutional Court shall have the authority to hear at the first and final level the decisions of which shall be final in conducting judicial review of laws against the Constitution. The provision is reaffirmed in Article 10 Paragraph (1) of Law Number 24 Year 2003 on the Constitutional Court (hereinafter referred to as the Constitutional Court Law);

Considering whereas the *a quo* petition is a petition for judicial review of law, *in casu* Law Number 32 Year 2004 on Regional Government (State Gazette of the Republic of Indonesia Number 126, Supplement to State Gazette of the Republic of Indonesia Number 4438) against the 1945 Constitution, and therefore the Court shall have the authorities to hear and decide the *a quo* petition.

2. Legal Standing of the Petitioner

Considering whereas that Article 51 Paragraph (1) of the Constitutional Court Law states, *"Petitioner shall be parties who believe that their constitutional rights and/or authorities have been impaired by the enactment of a law, namely:*

a. *individual Indonesian citizens;*

b. *customary law community units insofar as they are still in existence and in line with the social development and the principle of the Unitary State of the Republic of Indonesia as regulated in law;*

c. *public or private legal entities; or*

d. *state institutions”*.

Hence, for a person or a party to be accepted as Petitioner in the petition for judicial review of law against the 1945 Constitution, the person or party must first explain:

a. his qualification in the *a quo* petition, whether as an individual Indonesian citizen, customary law community unit (in accordance with the requirements as intended in Article 51 Paragraph (1) Sub-Paragraph b above), legal entity (public or private), or state institution;

b. his constitutional rights and/or authorities in such qualification which are deemed to have been impaired by the enactment of a law;

Considering whereas pursuant to the foregoing 2 (two) criteria in assessing whether or not is the Petitioner has the legal standing as Petitioner in the judicial review of law against the 1945 Constitution, it has become the jurisprudence of the Court that the criteria of constitutional impairment must be clearly described by the Petitioner in the petition, namely:

a. the Petitioner must have constitutional rights granted by the 1945 Constitution;

b. such constitutional rights of the Petitioner are deemed by the Petitioner to have been impaired by the law petitioned for review;

c. the constitutional impairment of the Petitioner shall be specific and actual or at least potential in nature which pursuant to logical reasoning will take place for sure;

d. there is a causal relationship (*causal verband*) between the impairment concerned and the coming into effect of the law petitioned for review;

e. If the petition is granted, it is expected that the constitutional impairment argued will not or does not occur any longer.

Considering whereas in his petition the Petitioner has explained his qualification as intended in Article 51 Paragraph (1) of the Constitutional Court Law, as an individual Indonesian citizen who serve as the Regent of Sarolangun, Jambi Province;

Considering whereas in such qualification, the Petitioner believed that his constitutional rights have been impaired by the coming into effect of Article 31 Paragraph (1) of the Regional Government Law because when the *a quo* petition was being examined by the Court, the Petitioner had been temporarily removed from his position as the Regent of Sarolangun by the Minister of Home Affairs on the recommendation of the Governor of Jambi, namely by the issue of Decision of the Minister of Home Affairs Number 131-25-1016 Year 2005 dated November 18, 2005 regarding Temporary Dismissal of the Regent of Sarolangun Jambi Province based on Article 31 Paragraph (1) and Elucidation of Article 31 Paragraph (1) of the Regional Government Law;

Considering, based on the foregoing description, in accordance with the provision of Article 51 Paragraph (1) and Elucidation of Article 51 Paragraph (1) of the Constitutional Court Law, the Court is of the opinion that the Petitioner has the qualification to file the *a quo* petition;

Considering further whereas the rights argued by the Petitioner as the basis to file the *a quo* petition are the right to be presumed innocent until the passing of a final and conclusive court decision, the right to equal treatment before the law, the right to be free from discriminatory actions, and the right to legal certainty as part of constitutional rights granted by the 1945 Constitution;

Considering whereas, in the Petitioner's opinion, the constitutional rights of the Petitioner which have actually been impaired by the temporary dismissal of the Petitioner from the position of the Regent of Sarolangun with the issue of Decision of the Minister of Home Affairs Number 131-25-1016 Year 2005 dated November 18, 2005 regarding Temporary Dismissal of the Regent of Sarolangun, Jambi Province;

Considering whereas, as explained by the Petitioner in his petition, the foregoing Decision of the Minister of Home Affairs was issued because the Petitioner was accused of committing a criminal act of corruption and that such accusation, while the *a quo* petition was being examined by the Court, had been at the prosecution process stage at the court, as intended in Elucidation of Article 31 Paragraph (1) of the Regional Government Law, based on which the

Governor of Jambi later recommended such temporary dismissal of the Petitioner from his position as the Regent of Sarolangun to the Minister of Home Affairs. Subsequently, the Minister of Home Affairs issued the decision as explained above. Thus, there is clearly a causal connection between the Petitioner's opinion concerning the impairment of his constitutional rights and the coming into effect of Article 31 Paragraph (1) and Elucidation of Article 31 Paragraph (1) of the Regional Government Law;

Considering, pursuant to the whole Petitioner's opinion as described above, it is evident that the impairment of the Petitioner's constitutional rights will not occur if the *a quo* petition is granted;

Considering, pursuant to the whole description above, the Court is of the opinion that the criteria of constitutional impairment have been fulfilled. Meanwhile, the Petitioner's qualification in the *a quo* petition is clear, so that the Petitioner has the legal standing to act as Petitioner in the petition for judicial review of Article 31 Paragraph (1) and Elucidation of Article 31 Paragraph (1) of the Regional Government Law;

Considering, as described earlier, the Court has the authority to examine, hear, and decide upon the *a quo* petition and since the *a quo* petition is filed by a party having the legal standing to act as Petitioner, the Court will consider the principal issue or substance of the petition.

3. Principal Issue of the Petition

Considering whereas Article 31 Paragraph (1) of the Regional Government Law and Elucidation of Article 31 Paragraph (1) of the Regional Government Law, argued by the Petitioner to be contradictory to the 1945 Constitution, read as follows:

Article 31 Paragraph (1): *"Head of Region and/or Vice Head of Region shall be temporarily dismissed by the President without recommendation from the Regional People's Legislative Assembly because of being accused of committing a criminal act of corruption, criminal act of terrorism, subversion and/or criminal act against state security"*, while Elucidation of Article 31 Paragraph (1) of the Regional Government Law reads, *"What is intended by 'accused in this provision shall be when the case files have been transferred to the court in the prosecution process"*;

Considering, since the Petitioner argued that Article 31 Paragraph (1) of the Regional Government Law is contradictory to the 1945 Constitution because the provision violates the principle of presumption of innocence, the principle of equality before the law, and the principle of legal certainty, and is discriminatory in nature. The main issue that must be considered by the Court in the *a quo* petition is whether the provision of Article 31 Paragraph (1) of the Regional Government Law and Elucidation thereof is contradictory to:

- the principle of presumption of innocence because against the Petitioner there has been no court decision having a permanent legal force which declares him guilty;

- the principle of equality before the law as regulated in Article 27 of the 1945 Constitution because the Petitioner feels to have not been treated equally compared to the case of Ir. Akbar Tanjung who was accused of committing a criminal act of corruption during his service as the Chairperson of the People's Legislative Assembly and the case of Major General Sriyanto who was accused of committing a criminal act of gross violation of Human Rights during his service as Commander General of the Special Forces Command (*Kopassus*) both of whom were, on the contrary, not temporarily dismissed from their positions, and hence the foregoing Article 31 Paragraph (1) and Elucidation of Article 31 Paragraph (1) of the Regional Government Law, in the Petitioner's opinion, is also discriminatory in nature;

- the principle of legal certainty as stated in Article 28D Paragraph (1) of the 1945 Constitution which reads, *"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"* because the accusation imposed on the Petitioner has not had any permanent legal force, but that the Petitioner was temporarily dismissed by the Minister of Home Affairs, hence the Petitioner believes that there is no legal certainty;

Considering whereas that in examining the *a quo* petition, in addition to carefully studying the statements and evidence proposed by the Petitioner, the Court has also read the written statement and heard the oral statement of the Government, read the written statement of the People's Legislative Assembly

(DPR), heard the statements of experts proposed by the Petitioner, as completely set out in the description of the Principal Case part;

Considering whereas in its written statement dated February 22, 2006 and signed by Hamid Awaludin (Minister of Law and Human Rights) and H. Moh. Ma'ruf (Minister of Home Affairs), as its attorneys-in-fact, the Government principally stated that the temporary dismissal of Head of Region and/or Vice Head of Region by the President without any recommendation from the Regional People's Legislative Assembly (DPRD), who is accused of committing criminal act of corruption, a criminal act of terrorism, subversion, and/or criminal act against the state security, shall be in the context of upholding the legal authority and equality before the law, so that the examination process in the court up to the pronouncement of Judge's decision can proceed smoothly without any intervention from the Head of Region and/or Vice Head of Region. According to the Government, it is necessary to take such actions in the context of implementing the principles of governance, namely the principles of accountability, efficiency, and effectiveness, in accordance with the provisions of Law Number 28 Year 1999 regarding State Governance Which Is Clean and Free from Collusion, Corruption, and Nepotism. In addition, such temporary dismissal is based on the idea for the regional government process to run properly without being disturbed by the court proceedings. The written statement of the Government was then reaffirmed in the statement of the Government, represented by the Minister of Law and Human Rights and the Minister of Home Affairs, in the hearing on February 22, 2006;

Considering whereas, in its written statement dated March 6, 2006, received in the Court Registrar's office on the same date, the People's Legislative Assembly (DPR) principally stated as follows:

- that the temporary dismissal, as regulated in Article 31 Paragraph (1) of the Regional Government Law, is intended to avoid the obstruction of government administration process in the region;

- that the temporary dismissal is also intended to simplify the governance affairs, in which the duties of a Regent are delegated to a temporary officials and the Regional People's Legislative Assembly as the regional government organizing element will not be affected by the legal process imposed on the Regent having the status of defendant;

- that the temporary dismissal of Head of Region and/or Vice Head of Region does not need the consideration from the Regional People's Legislative Assembly, because in the event of commission of criminal acts, the related party shall be responsible for and on his own behalf;

- that with the foregoing temporary dismissal the related party cannot perform intervention or misuse his authorities as a public official concerning the case accused on him;

- that with such temporary dismissal, there is no concern that the related party can damage and/or remove evidence;

Considering whereas the Court has also heard the statements of 2 (two) experts presented by the Petitioner namely Jawahir Thantowi, S.H., Ph.D. and Dr. Rudy Satriyo, S.H., M.H. respectively in the hearings on February 22, 2006 and on March 8, 2006, and read the written statement of Prof. Dr. Dahlan Thaib, S.H., M.Si. submitted by the Petitioner and received at the Court Registrars' office on March 8, 2006, who principally stated as follows:

- Expert Jawahir Thantowi, S.H., Ph.D.

  That the temporary dismissal or permanent dismissal is actually a punishment. Both matter have the same impact on society.

  That the expert worried that if the provision of Article 31 Paragraph (1) of Regional Government Law is sustained, there will be *obstruction of justice* resulting in misled justice. Such provision also gives a chance for the *abuse of power*, while a regent is directly elected by the people.

  That, according to this expert, the provision of Article 31 Paragraph (1) of the Regional Government Law also create multi-interpretation, because there is a mix of legal substance. This reason is that, although the types of crimes regulated in the provision are *extraordinary crimes,* the different objects will lead to the consequence of discriminatory law enforcement.

- Expert Dr. Rudy Satriyo, S.H., M.H.

  That temporary dismissal is a sanction and since it is a sanction it must be proved in advance that the defendant is guilty and there is a decision

declaring that the defendant is guilty. If the sanction named the temporary dismissal has existed since the commencement of the process, it has violated the principle of presumption of innocence.

That according to the expert, the principle of presumption of innocence is absolute and can not be diminished, at any time, in any condition, in any criminal acts.

That therefore the sanction named temporary dismissal cannot be imposed on a person, whoever he/she is, if the person is in the status of suspect and defendant. It is not necessary to dismiss an official while he is under the examination hearing process in so far it is possible for the related person to follow the hearing process, except if it is later proved that he/she complicates the hearing and hence the judge will otherwise declare.

- Expert Prof. Dr. Dahlan Thaib, S.H., M.Si.

That a regent, *in casu* the Regent of Sarolangun, with the status of defendant in the corruption case, is not detained by the law enforcement officers, and hence the regent has no obstacles at all that prevent him from performing his functions and duties, except the regent is disliked supported by his people and that resistance occurs in such a way that it disturbs the governing process, then the regent can be temporarily dismissed. If such condition does not occur, it is apparently not necessary to impose an administrative punishment through temporary dismissal.

That the temporary dismissal of the Regent of Sarolangun by the Minister of Home Affairs who refers to Article 31 Paragraph (1) of the Regional Government Law is contradictory to Article 27 Paragraph (1) of the 1945 Constitution. In addition, the temporary dismissal is also contradictory to Article 28D Paragraph (1) of the 1945 Constitution.

That the temporary dismissal of the Regent of Sarolangun prior to the passing of a verdict on corruption case by the court is in violation of the principle of legal certainty or the principle of legality because the trial process in Indonesia is based on the principle of presumption of innocence.

Considering whereas upon considering carefully the Petitioner's arguments, written and oral statements of the Government, written statement of the People's Legislative Assembly, statements of the experts presented by the Petitioner, and facts occurring in the hearing, with respect to the Petitioner's arguments, the Court is of the following opinion:

- That, prior to addressing the issue as to whether the temporary dismissal of a public official, *in casu* a regent, accused of committing certain crimes, as regulated by Article 31 Paragraph (1) of the Regional Government Law, is contradictory to the principle of presumption of innocence, the Court deems it necessary to first affirm that the principle of presumption of innocence is a principle applicable in criminal law sector which is a right of a suspect or defendant to be presumed innocent before a court decision having a

permanent legal force is passed. Such right is not only granted by the 1945 Constitution, as a constitution of a constitutional state, but it has also been universally accepted as a part of civil and political rights which must therefore be respected, protected, and guaranteed to be fulfilled. Article 14 Paragraph (2) of the *International Covenant on Civil and Political Rights 1966* (ICCPR) states, *"Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law"*. Indonesia, as a constitutional state, has mentioned such provision in many laws, such as, Law Number 39 Year 1999 on Human Rights, Law Number 4 Year 2004 on Judicial Power. Article 18 Paragraph (1) of Law Number 39 Year 1999 on Human Rights states, *"Every person who is arrested, put held in detention, and prosecuted for allegedly committing a criminal act shall have the right to be presumed innocent until proved guilty in a court hearing and given all legal guarantees needed for the defense, in accordance with the provisions of laws and regulations"*. Article 8 Law Number 4 Year 2004 on Judicial Power states, *"Every person who is suspected, arrested, held in detention, prosecuted, and/or brought to the trial must be presumed innocent before any court decision declaring his guilt and having a permanent legal force is passed"*.

Pursuant to the provisions in the international law and national law, as firmly formulated in the foregoing Laws, it is evident that the principle of presumption of innocence is only applicable in the field of Criminal Law, particularly in *due process of law*. More particularly, the principle is actually related to the *burden of proof (bewijslast*) principle in which the

obligation to prove is the burden of the state, *c.q.* the law enforcement agents, while the defendant is not burdened by the obligation to prove that he is not guilty, except in certain cases where the principle of reverse authentication (*omgekeerde bewijslast)* has been fully adopted.

Meanwhile, the formulation of by Article 31 Paragraph (1) of the Regional Government Law and Elucidation of Article 31 Paragraph (1) of the Regional Government Law, petitioned for review in the *a quo* petition constitutes a situation which illustrates the working of two processes of two different but mutually related legal sectors, namely the legal process of state administration in the form of *administrative treatment* in the form of temporary dismissal of a state administration official, *in casu* the regent, and the process of criminal law process namely the prosecution of the state administration official under the accusation of committing a certain criminal act. The former legal process, namely administration action of temporary dismissal, requires the latter legal process, namely the prosecution of the state administration official, *in casu* the regent, under the accusation of committing a certain criminal act. The principle of presumption of innocence is a prerequisite for the latter process, namely in the hearing process to prove the criminal act accused to a state administrative official, *in casu* the regent, which requires *conclusive evidence* or *conclusive proof*, namely evidence that is so strong that every person will come to a conclusion that the defendant is guilty and shall therefore be imposed with sanction in the form of a certain punishment.

However, the principle of presumption of innocence is not a prerequisite for the former process, namely the administration action of temporary dismissal. The reason is that, temporary termination, being only an administrative action and not in the context of giving punishment, does not require is the so-called *conclusive evidence, conclusive proof.* Temporary dismissal shall sufficiently require *presumptive evidence, circumstantial evidence,* namely evidence which can temporarily be deemed true until there is another evidence to the contrary;

In the *a quo* case, *presumptive evidence* or *circumstantial evidence* is the fact concerning the commencement of the prosecution process against to a state administrative official, *in casu* the regent, who is accused of committing the criminal act as intended in Article 31 Paragraph (1) of the Regional Government Law. When there is no such *presumptive evidence* the administrative action of temporary dismissal automatically cannot be conducted. In other words, if connected to the *a quo* petition and the prosecution files on the alleged crime committed by a Head of Region and/or Vice Head of Region, as intended in Article 31 Paragraph (1) of the Regional Government Law have been transferred to the court by the public prosecutor, then there *presumptive evidence* shall be sufficient to take administrative action of temporary dismissal of the Head of Region and/or Vice Head of Region concerned;

With regard to the foregoing description, the Petitioner's arguments that qualify temporary dismissal as equal to punishment in the sense of criminal law underlying the construction of thought that temporary dismissal is contradictory to the principle of presumption of innocence, are not appropriate;

- That the temporary dismissal action against a public official, particularly a state administrative official accused of committing a criminal act is important to support the *due process of law* to prevent the related official from using his position to affect the examination process or legal prosecution accused on him. Or the reverse, it is important to prevent law enforcement officers from being affected by the defendant's position as the Head of Region in the legal tradition where people are reluctant to do something in respect of a person of higher status (*ewuh pakewuh)*.

  Thus, temporary dismissal in fact realizes the principle of equality before the law as intended in Article 27 Paragraph (1) or Article 28D Paragraph (1) of the 1945 Constitution. The reason is that, with temporary dismissal of a Head of Region and/or Vice Head of Region who is accused of committing a crime, as regulated in Article 31 Paragraph (1) of the Regional Government Law, every person can directly see that any person committing a criminal act or crime will be subject to equal legal process, meaning that a position hold by a person cannot block or hamper the criminal accountability process of the person if he/she is accused of

committing a criminal act. Since a certain position hold by a person who is accused of committing a criminal act, according to logical reasoning, can obstruct the criminal hearing process towards the related person – known as *obstruction of justice* – to enforce the principle of *equality before the* law there must be legal steps to eliminate such obstruction. With regard to the *a quo* petition, the administrative action in the form of temporary dismissal of a Head of Region and/or Vice Head of Region who is accused of committing a criminal act as regulated in Article 31 Paragraph (1) of the Regional Government Law is in fact a legal step to eliminate the potential of *obstruction of justice*;

- That the Petitioner argued that Article 31 Paragraph (1) of the Regional Government Law is discriminatory in nature. With respect to this matter, it is important to understand that discriminatory can be said to occur when there is every limitation, harassment, or isolation either directly or indirectly based on human differences on the grounds of religion, nationality, race, ethnicity group, social status category, economic status, gender, language, politics, having the nature of reduction, deviation or abolition, acknowledgement,, implementation or application of Human Rights and basic freedoms in individual or collective life in the fields of politics, economy, law, social, cultural, and other aspects of life (*vide* Article 1 Paragraph (3) of Law Number 39 Year 1999 on Human Rights);

The foregoing provisions concerning discrimination prohibition are also regulated in the *International Covenant on Civil and Political Rights* ratified by the Government of the Republic of Indonesia in Law Number 11 Year 2005. *Article 2 International Covenant of Civil Political Rights* reads: *"Each State Party to the present Covenant undertakes to respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status";*

With regard to the *a quo* petition, such condition does not occur. Temporary dismissal as regulated in Article 31 Paragraph (1) of the Regional Government Law and Elucidation thereof is applied to Heads of Region (Governors, Regents, or Mayors). With this regard, an adage which reads *"Ubi eadem ratio, ibi idem jus"* shall apply, for the same reason the same law shall apply. Thus, it is not appropriate to state that the temporary dismissal of the Petitioner from the position of Regent of Sarolangun is discriminatory based on a comparison with other public officials or parties in different qualifications and under different Laws. For example, as compared by the Petitioner, Ir. Akbar Tanjung as the Chairperson of the People's Legislative Assembly of the Republic of Indonesia was a defendant in the court, but he was not temporarily dismissal from his position as the Chairperson of the People's Legislative Assembly of the Republic of Indonesia, it is not a discrimination because it

refers to a different Law and he is not a state administrative official like the Head of Region. It is true that the definition of discrimination contains an element of different treatment but not every different treatment is automatically a discrimination.

In addition, in assessing whether or not there is an issue of discrimination in a Law it is also possible to see from the perspective of how the constitution formulates protection of a constitutional right, whether the right protected by the constitution is placed in the context of *due process* or in the context of equal protection. It is important to mention such differentiation because if a Law denies the right of all people, it is more appropriate to assess such denial in the context of *due process*. However, if a Law eliminates a right for some people but gives such right to other people, such condition can be considered as a violation of *equal protection* (*vide* Erwin Chemerinsky, *Constitutional Law: Principles and Policies*, 1997, h. 639). With regard to the *a quo* petition, Article 31 Paragraph (1) of the Regional Government Law does not contain any of the foregoing two conditions, hence there is no issue of discrimination. The examples considered by the Petitioner as discriminatory practices, as argued by the Petitioner in his petition, are issue of practice outside the context of review on the constitutionality of the *a quo* Law;

- That the provision on temporary dismissal as administrative action similar to the provision regulated in Article 31 Paragraph (1) of the Regional

Government Law has become a commonly accepted rule. It is expressed in Article 24 Law Number 43 Year 1999 on Personnel, Articles 24 and 25 the Law Number 24 Year 2003 on the Constitutional Court, Articles 13 and 14 Law Number 5 Year 2004 on Amendment To Law Number 14 Year 1985 on the Supreme Court.

- That the Petitioner also argued that Article 31 Paragraph (1) of the Regional Government Law creates legal uncertainty because the accusation towards to the Petitioner has no permanent legal force but the Petitioner was recommended to be temporarily dismissal by the Governor of Jambi. Accordingly, according to the Petitioner, Article 31 Paragraph (1) of the Regional Government Law is contradictory to Article 28D Paragraph (1) of the 1945 Constitution. With respect to this argument of the Petitioner it can be explained that the Petitioner has mixed up or equalized an accusation with a court decision and at the same time also mixed up the form of administrative action of temporary dismissal with punishment. Permanent legal force can be granted to court decision, the authority of which belongs to the judge, not to accusation, which is under the authority of public prosecutor, which obeys to the authentication and assessment by the judge. The differences between administrative action and punishment have been explained in the earlier description.

  On the contrary, the fact proposed by the Petitioner, that the Petitioner was recommended by the Governor of Jambi to be temporarily dismissed

when the prosecution process on the accusation to Petitioner began, clearly shows the operation of legal certainty. The reason is that, the fact proposed by the Petitioner means that the provision of Article 31 Paragraph (1) of the Regional Government Law has been implemented in accordance with the purpose of the provision.

In another perspective, Article 31 Paragraph (1) of the Regional Government Law also gives certainty to the Petitioner and the people that must be served by the Petitioner in his position as a regent because with the temporary dismissal there is no obstruction to the legal process for the accusation towards the Petitioner because in this respect it is not possible for the Petitioner, through his position, to obstruct or hamper the judicial process (*obstruction of justice*) hence it is faster to obtain the court decision having a permanent legal force (*inkracht van gewijsde*). By quickly obtaining the court decision having a permanent legal force on the Petitioner, the Petitioner or people that should be served by the Petitioner in his position as a regent will quickly obtain legal certainty whether the Petitioner is guilty or not. Such method will avoid prolonged trial process resulting in prolonged law enforcement efforts which will finally create denial of justice itself, as illustrated by the adage *"justice delayed justice denied"*;

Considering whereas besides giving the arguments on constitutional impairment due to the coming into effect of Article 31 Paragraph (1) of the Regional Government Law, the Petitioner also questioned 2 (two) matters:

- First, no involvement of the Regional People's Legislative Assembly in the process of temporary dismissal of a Head of Region in the event that the related person is accused of committing a criminal act as mentioned in Article 31 Paragraph (1) of the Regional Government Law, while the Head of Region has been directly elected by the people, hence the Petitioner considers it that it has injured democracy;

- Second, that the accusation towards the Petitioner based on Article 31 Paragraph (1) of the Regional Government Law has been made as a *black campaign* to harm the Petitioner's reputation by his political opponents in the nomination of Regent of Sarolangun;

With respect to the foregoing two matters the Court deems it necessary to give the following considerations:

- Concerning non-involvement of the Regional People's Legislative Assembly in the process of temporary dismissal of Head of Region accused of committing a criminal act as intended in Article 31 Paragraph (1) of the Regional Government Law, the Court is of the opinion that the approval or opinion of the Regional People's Legislative Assembly is needed in matters related to the action of a Head of Region as regional governance

administrator in which the Regional People's Legislative Assembly as an element of regional representative is a part of regional government and also as an institution that must monitor the Head of Region. Monitoring by the Regional People's Legislative Assembly is political in nature especially in the context of determining regional government policies for people's welfare in the related region in accordance with the objective of regional autonomy. Meanwhile, the temporary dismissal of the Head of Region as administrative action is conducted because of an accusation that the related Head of Region commits a criminal act which has no correlation with the functions of regional government. Criminal responsibility is individual or personal in nature for anyone disregarding their position or social status in accordance with the principle of equality before the law. Therefore, a criminal act is an individual responsibility which is not related to official responsibility. In fact, to enforce the principle of equality before the law, a Head of Region who is accused of committing a criminal act as intended in Article 31 Paragraph (1) of the Regional Government Law, must be guaranteed as free from the influence of political process that may occur if taking the temporary dismissal action requires approval from the Regional People's Legislative Assembly. Furthermore, Article 31 Paragraph (1) of the Regional Government Law is required because criminal act of corruption, criminal act of terrorism, subversion, and/or criminal act against state security are related to public interest having a wide impact and their handling needs quick, efficient and effective steps.

- The possibility of making use of temporary dismissal as a *black campaign* by the political opponents when a Head of Region intends to nominate himself again as candidate Head of Region, as argued to have happened to the Petitioner is not a matter of constitutionality because it is a matter of application of Law which is used as unfair political competition practices. If the effects of unfair political competition practices harm the Petitioner, legal measures are available for the Petitioner to defend his legal interest (*rechtsbelang*), and hence, the Petitioner's arguments concerning the matter are irrelevant for further consideration.

Considering, based on the entire explanation above, the Petitioner's arguments stating that Article 31 Paragraph (1) of the Regional Government Law and Elucidation of Article 31 Paragraph (1) of the Regional Government Law are contradictory to the 1945 Constitution, are irrelevant so that there is no reason for the Court to grant the Petitioner's petition;

In view of Article 56 Paragraph (5) of the Law of the Republic of Indonesia Number 24 Year 2003 on the Constitutional Court (State Gazette of the Republic of Indonesia Year 2003 Number 98, Supplement to State Gazette of the Republic of Indonesia Number 4316);

PASSING THE DECISION

- To declare that the Petitioner's petition is rejected.

Hence, this Decision was made in the Plenary Consultative Meeting of 9 (nine) Constitutional Court Justices on Tuesday, March 28, 2006, and was pronounced in the Plenary Session of the Constitutional Court open for the public on this day, Wednesday, March 29, 2006, by us Prof. Dr. Jimly Asshiddiqie, S.H. as the Chairperson and concurrent member and I Dewa Gede Palguna, S.H., M.H., Prof. H. Abdul Mukthie Fadjar, S.H., M.S., Soedarsono, S.H., Prof. Dr. H.M. Laica Marzuki, S.H., Prof. H.A.S. Natabaya, S.H., LL.M, H. Achmad Roestandi, S.H., Dr. Harjono, S.H., M.C.L, and Maruarar Siahaan, S.H., respectively as Members, assisted by Fadzlun Budi S.N., S.H., M.Hum. as Substitute Registrar, in the presence of the Petitioner/Petitioner's Attorney, Government, and People's Legislative Assembly of the Republic of Indonesia;

CHIEF JUSTICE

signed

Prof. Dr. Jimly Asshiddiqie, S.H.

JUSTICES,

signed	signed
Prof. Dr. H.M. Laica Marzuki, S.H.	**Prof. H.A.S. Natabaya, S.H., LL.M**
signed	signed
H. Achmad Roestandi, S.H.	**Prof. H.A. Mukthie Fadjar, S.H., M.S.**
signed	signed

Dr. Harjono, S.H., M.C.L.	**I Dewa Gede Palguna, S.H., M.H.**
signed	signed
Maruarar Siahaan, S.H.	**Soedarsono, S.H.**

SUBSTITUTE REGISTRAR,

signed

Fadzlun Budi S.N., S.H., M.Hum.