



DECISION

Number 17/PUU-X/2012

FOR THE SAKE OF JUSTICE UNDER THE ONE ALMIGHTY GOD

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA

[1.1] Hearing constitutional cases at the first and final levels, has passed a decision in the case of petition for Judicial Review of Law Number 32 Year 2004 regarding Regional Government under the 1945 Constitution of the State of the Republic of Indonesia, filed by:

[1.2] Name : **Heriyanto, S.H., M.H.**

Place/date of birth : Jakarta, September 25, 1986

Occupation : Assistance Team for the General
Elections Supervisory Board

Address : Jalan Siswa Neighborhood Ward (RT)
003/Neighborhood Block (RW) 009,
Larangan Indah Sub-District, Larangan
District, Tangerang City, Banten

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

[1.3] Having read the petition of the Petitioner;

Having heard the statement of the Petitioner;

Having examined the evidence of the Petitioner;

Having heard and read the written statement of the Government;

Having heard and read the written statements of the Expert of the
Petitioner;

Having read the written conclusion of the Petitioner;

2. FACTS OF THE CASE

[2.1] Whereas the Petitioner has filed a petition without a date, which was received at the Registrar's Office of the Constitutional Court (hereinafter referred to as the Registrar's Office of the Court) on January 27, 2012 based on the Deed of Petition Dossier Receipt Number 47/PAN.MK/2012 and which was registered in the Constitutional Case Registration Book Number 17/PUU-X/2012 on February 13, 2012, which was revised and received at the Registrar's Office of the Court on February 28, 2012 which describes the following matters:

A. AUTHORITY OF THE CONSTITUTIONAL COURT

The Petitioner in this petition first explained the authority of the Constitutional

Court to review Article 116 paragraph (4) to the extent of the words “as intended in Article 83” of Law Number 32 Year 2004 concerning Regional Government (Law No. 32/2004):

1. Referring to the provision of Article 24C paragraph (1) of the 1945 Constitution (hereinafter referred to as the 1945 Constitution) *juncto* Article 10 paragraph (1) sub-paragraph a of Law Number 24 Year 2003 regarding the Constitutional Court (hereinafter referred to as the Constitutional Court Law), that one of the authorities of the Constitutional Court is to conduct judicial review of Laws under the 1945 Constitution.

Article 24C paragraph (1) of the 1945 Constitution states, among other things, that:

“The Constitutional Court shall have authority to hear at the first and final levels the decision of which shall be final, to conduct judicial review of Laws under the Constitution.”

Article 10 paragraph (1) sub-paragraph a of the Constitutional Court Law states, among other things, that:

“The Constitutional Court shall have authority to hear at the first and final levels, the decision of which shall be final:

- a. to review laws under the 1945 Constitution of the State of the Republic of Indonesia, ...”

2. Article 9 paragraph (1) of Law Number 12 Year 2011 concerning the Formulation of Laws and Regulations states that, “In the event that a Law is allegedly inconsistent with the 1945 Constitution, it shall be reviewed by the Constitutional Court.”
3. Whereas the norm petitioned for review is the norm of Law Number 32/2004:

<p>The Article petitioned for review is Article 116 paragraph (4) to the extent of the words “as intended in Article 83” of Law Number 32 Year 2004 concerning Regional Government. Full text of Article 116 paragraph (4) of Law Number 32 Year 2004 concerning Regional Government reads, “Any state officials, structural officials and functional officials in public office or any village head deliberately violating the provisions as intended in Article 83 shall be subject to a minimum criminal sanction of</p>	<p>Whereas Article 83 of Law Number 32 Year 2004 concerning Regional Government regulates the following provisions:</p> <p>Article 83 paragraph (1)</p> <p>(1) Campaign funds may be obtained from:</p> <ul style="list-style-type: none"> a. candidate pairs; b. nominating political parties and/or coalitions of political parties; c. non-binding donations
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<p>imprisonment of 1 (one) month or a maximum criminal sanction of imprisonment of 6 (six) months and/or a minimum fine of Rp600,000.00 (six hundred thousand Rupiah) or a maximum fine of Rp6,000,000.00 (six million Rupiah)”;</p>	<p>from other parties, including donations from individuals and/or private legal entities;</p> <p>(2) A Candidate pair must have a special account for campaign funds and the intended account shall be registered to the Regional General Elections Commission (KPUD).</p> <p>(3) The campaign fund donations as intended in paragraph (1) sub-paragraph c from individuals shall not exceed Rp50,000,000.00 (fifty million Rupiah) and from private legal entities shall not exceed Rp350,000,000.00 (three hundred and fifty million Rupiah).</p> <p>(4) A Candidate pair may receive</p>
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	<p>and/or approve financing not in the form of money directly for campaign activities.</p> <p>(5) Donations to a candidate pair exceeding Rp2,500,000.00 (two million and five hundred thousand Rupiah), either in the form of money or not, which can be converted into a value of money, must be reported to the Regional General Elections Commission (KPUD) with respect to the amount of donations and identity of the donors.</p> <p>(6) A Candidate pair shall submit a report on donations of campaign funds as intended in paragraph (3) and paragraph (5) to the Regional General Elections Commission (KPUD) within 1 (one) day prior to the</p>
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	<p>commencement of the campaign period and 1 (one) day following the end of the campaign period.</p> <p>(7) The Regional General Elections Commission (KPUD) shall announce a report on donations of campaign funds of each candidate pair as intended in paragraph (6) to the public through the mass media one day after receiving the report from the candidate pair.</p>
<p>While they are supposed to be....</p> <p>Article 116 paragraph (4) of Law Number 32 Year 2004 concerning Regional Government should be “Any state officials, structural officials and functional officials in public office or any village head</p>	<p>Article 80 of Law Number 32 Year 2004 concerning Regional Government provides that: State officials, structural officials and functional officials in public offices and village heads shall be</p>

<p>deliberately violating the provisions as intended in Article 80 shall be subject to a minimum criminal sanction of imprisonment of 1 (one) month or a maximum criminal sanction of imprisonment of 6 (six) months and/or a minimum fine of Rp600,000.00 (six hundred thousand Rupiah) or a maximum fine of Rp6,000,000.00 (six million Rupiah”);</p>	<p>prohibited from making decisions and/or taking actions which benefit or disbenefit any one of the candidate pairs during the campaign period.</p>
<p>There are 4 norms of the 1945 Constitution used as the touchstone in this petition, namely:</p> <ol style="list-style-type: none"> 1. Article 1 paragraph (3) stating that “The State of Indonesia shall be a rule of law state”; 2. Article 22E paragraph (1) stating that “General elections shall be held in a direct, general, free, confidential, honest and just manner once in every five years”; 3. Article 28G paragraph (1) stating that “Every person shall have the right to protect him/herself, his/her family, honor, dignity and property 	

under his/her control, and shall have the right to feel secure and be protected from the threat of fear to do, or not to do something which constitutes human right”;

4. Article 28D paragraph (1) stating that “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”

4. Based on the foregoing, the Constitutional Court has authority to examine and decide upon this petition for judicial review.

B. LEGAL STANDING OF THE PETITIONER

Whereas pursuant to the provision of Article 51 paragraph (1) of the Constitutional Court Law, in order that a person or a party may be accepted as a Petitioner in a petition for judicial review of a Law under the 1945 Constitution, the intended person or party:

- a. must explain his/her capacity in his/her petition, namely whether acting as an individual Indonesian citizen, a customary law community unit, a legal entity or a state institution;
- b. the impairment of his/her constitutional right and/or authority, in the capacity as intended in point a, due to the coming into effect of the Law petitioned for review.

Based on the aforementioned provision, the Petitioner needs to first explain his

capacity, constitutional rights and the specific impairment to be suffered by him, namely as follows:

1. The Petitioner is an individual Indonesian citizen working daily as a member of the Assistance Team for the General Elections Supervisory Board specifically handling legal affairs and violations. As a member of the Assistance Team for Handling Legal Affairs and Violations, the Petitioner has the following the duties:
 - a) Conducting, preparing and submitting review to the Coordinator of Violation Handling Division and the Plenary Meeting of the General Elections Supervisory Board in the process of violation handling;
 - b) Designing the draft of the Regulations of the General Elections Supervisory Board before being discussed;
 - c) Receiving consultation from the General Elections Supervisory Committee in relation to the process of violation handling at Provincial/Regency/Municipal levels;
 - d) Supervising the performance of the provincial/regency/municipal General Elections Supervisory Committee assigned by the Chairperson and Members of the General Elections Supervisory Board;
 - e) Providing technical guidance and training to the provincial General

Elections Supervisory Committee, the regency/municipal General Elections Supervisory Committee, the District supervisory board and the Field General Elections Supervisory Board;

- f) Providing technical guidance to the provincial/regency/municipal General Elections Supervisory Committee in preparing the statements for testimonial purposes in the hearing session on the disputes over the results of general elections in the Constitutional Court;
- g) Making and preparing the legal opinion of the General Elections Supervisory Board for the statements of the General Elections Supervisory Board to be presented in the hearing session in the Disputes over the Results of General Elections in the Constitutional Court;
- h) Making, preparing and providing clarification to the Reporting Parties, Reported Parties, Witnesses and Related Parties in the process of violation handling.

Whereas in performing the duties as a member of the Assistance Team for the General Elections Supervisory Board, the Petitioner has received many complaints from the General Elections Supervisory Committees from throughout Indonesia on the provision concerning the criminal sanction in Law Number 32/2004 which cannot be applied or used,

namely Article 116 paragraph (4) of Law Number 32/2004 because this article incorrectly refers to a previous article. Whereas the General Elections Supervisory Committee's complaints with respect to the inability of the General Elections Supervisory Committee to follow up to the police every criminal violation in the General Elections committed by state officials, structural officials and functional officials whose actions and/or decisions have been conducted/made to the disbenefit or benefit of a particular candidate pair.

2. Whereas as an Indonesian citizen with a good understanding and comprehension of the law, the Petitioner considers that Article 116 paragraph (4) of Law Number 32/2004 which cannot be used has had a significantly adverse impact to the public because the actions and/or decisions of state officials, structural officials and functional officials to the benefited or disbenefit of any one of the candidate pairs cannot be subject to a criminal sanction. In every decision on a dispute over the results of regional head and vice regional head general elections, the Constitutional Court states that structured, systematic and massive violations injure the principles of democracy in the implementation of the regional head and vice regional head General Elections. In addition to the foregoing, the actions and/or decisions of state officials, structural officials and functional officials to the benefit or disbenefit of any one of the candidate pairs constitute violations which may involve the bureaucracy, civil servants and the general public in a structured, systematic and massive manner. The

Petitioner's allowing this condition to continue would mean that the Petitioner allows the right to injure democracy to continue, which can also impair the constitutional right of the Petitioner as a resident who is eligible to be a voter to freely vote in the regional head and vice regional head General Elections.

3. Whereas the Petitioner, who holds a bachelor degree and master's degree with a legal background cannot allow legal uncertainty, injustice and unusefulness of the applicable rules to occur in this country. The coming into effect of Article 116 paragraph (4) of Law Number 32/2004 which cannot be used has created legal uncertainty, injustice and unusefulness in the public, while the actions and/or decisions of state officials, structural officials and functional officials to the benefit or disbenefit of any one of the candidate pairs constitute structured, systematic and massive violations which have injured the principles of democracy as well as the principles of freedom, honesty and justice in the implementation of General Elections as guaranteed in the 1945 Constitution.
4. Whereas the incorrect reference in Article 116 paragraph (4) of Law Number 32/2004 has directly resulted in legal immunity of the state officials, structural officials and functional officials when they take actions and/or make decisions to the benefit or disbenefit of any one of the candidate pairs, while such actions and/or decisions are clearly prohibited in Article 80 of Law Number 32/2004. Therefore, Article 116 paragraph (4)

has given a special treatment before the law to state officials, structural officials and functional officials when they commit a criminal act in the General Elections. This condition has led to the violation of the principle of equality before the law for the Petitioner and the public at large, which is expressly guaranteed in the 1945 Constitution.

5. Whereas the actions and/or the decisions of state officials, structural officials and functional officials to the benefit or disbenefit of any one of the candidate pairs often use methods of intimidation and methods which cause fear among the community to freely vote. The Constitutional Court in its Decision Number 45/PHPU.D-VIII/2010 states that citizens shall have voting rights which constitute human rights and which must be free from the feelings of fear, pressure and threat in participating in the process of democratization, as mandated by Article 28G paragraph (1) of the 1945 Constitution stating that “Every person shall have the right to protect him/herself, his/her family, honor, dignity and property under his/her control, and shall have the right to feel secure and be protected from the threat of fear to do, or not to do something which constitutes human right” and in accordance with Article 30 of Law Number 39 Year 1999 concerning Human Rights stating that “Every person shall have the right to the feeling of security and protection against the threat of fear to do or not to do something”.
6. Whereas referring to Decisions of the Court following Decision Number

006/PUU-III/2005 dated May 31, 2005 and Decision Number 11/PUU-V/2007 dated September 20, 2007 and subsequent decisions, the Constitutional Court is of the opinion that the impairment of constitutional rights and/or authority as intended in Article 51 paragraph (1) of the Constitutional Court Law must meet 5 (five) requirements, namely:

1. the existence of constitutional rights and/or authority of the Petitioner granted by the 1945 Constitution;
2. the Petitioner considers that such constitutional rights and/or authority have been impaired by the coming into effect of the Law petitioned for review;
3. 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;
4. there is a causal relationship (*causal verband*) between the impairment of constitutional rights and/or authority of the Petitioner and the Law petitioned for review;
5. it is likely that with the granting of the Petitioner petition, the impairment of such constitutional rights and/or authority argued by the Petitioner will not or will no longer occur;

Therefore, there are 5 (five) absolute requirements which must be

met in conducting judicial review of a Law under the 1945 Constitution. The *first requirement* is the qualification of the Petitioner as an Indonesian citizen to act as a Petitioner as asserted in Article 51 paragraph (1) of the Constitutional Court Law. The *second requirement* is that the coming into effect of a Law impairs the Petitioner's constitutional rights and/or authority. The *third requirement* is that such constitutional impairment must be specific. The *fourth requirement* is that such impairment has been due to the coming into effect of the Law being petitioned. The *fifth requirement* is that such constitutional impairment will no longer occur if this petition is granted.

7. Whereas the 5 (five) requirements as intended above are re-explained by the Court through Decision Number 27/PUU-VII/2009 in a formal judicial review of the Second Amendment to the Supreme Court Law (page 59) stating as follows:

“Based on the practices by the Court (2003-2009), the court considers that individual Indonesian citizens, particularly tax payers (tax payer, *vide* Decision Number 003/PUU-I/2003) of various associations and NGOs having concern with a Law for the interests of the public, legal entities, regional governments, state institutions and so on, have legal standing to file a petition for judicial review, either formal or substantive review, of a Law under the 1945 Constitution (also refer to Lee Bridges, *et al.* in

“Judicial Review in Perspective”, 1995”;

8. Whereas based on the description given by the Petitioner above, it is evidenced that the Petitioner (an individual Indonesian citizen) has legal standing to act as a Petitioner in this petition for judicial review of this Law.
9. Whereas, in this petition, it is proper for the Petitioner to request the Constitutional Court Justices to grant the legal standing of the Petitioner for the sake of the enforcement of the principles of General Elections which are free, honest and just by upholding legal certainty, justice, usefulness and the principles of equality of every citizen before the law.

C. POSITA

The reasons given by the Petitioner for the application of Article 116 paragraph (4) of Law Number 32 Year 2004 concerning Regional Government to be inconsistent with the 1945 Constitution are:

1. Whereas Article 116 paragraph (4) of Law Number 32/2004 states that “Any state officials, structural officials and functional officials in public office or any village head deliberately violating the provisions as intended in Article 83 shall be subject to a minimum criminal sanction of imprisonment of 1 (one) month or a maximum criminal sanction of imprisonment of 6 (six) months and/or a minimum fine of Rp600,000.00 (six hundred thousand Rupiah) or a maximum fine of Rp6,000,000.00 (six million Rupiah).”;

2. Whereas the phrase “as intended in Article 83” set out in Article 116 paragraph (4) of Law Number 32/2004 indicates a criminal event subject to the sanction of Article 116 paragraph (4) of Law Number 32/2004. The reference to Article 83 in Article 116 paragraph (4) of Law Number 32/2004 as a criminal event subject to a sanction is incorrect. Article 116 paragraph (4) of Law Number 32/2004 is supposed to refer to Article 80 of Law Number 32/2004.

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<p>Article 116 paragraph (4) of Law Number 32 Year 2004 concerning Regional Government “Any state officials, structural officials and functional officials in public office or any village head deliberately violating the provisions as intended in Article 83 shall be subject to a minimum criminal sanction of imprisonment of 1 (one) month or a maximum criminal sanction of imprisonment of 6 (six) months and/or a minimum fine of</p>	<p>Article 116 paragraph (4) of Law Number 32 Year 2004 concerning Regional Government is supposed to be “Any state officials, structural officials and functional officials in public office or any village head deliberately violating the provisions as intended in Article 80 shall be subject to a minimum criminal sanction of imprisonment of 1 (one) month or a maximum criminal sanction of imprisonment</p>

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<p>Rp600,000.00 (six hundred thousand Rupiah) or a maximum fine of Rp6,000,000.00 (six million Rupiah).”</p>	<p>of 6 (six) months and/or a minimum fine of Rp600,000.00 (six hundred thousand Rupiah) or a maximum fine of Rp6,000,000.00 (six million Rupiah).”</p>
<p>Whereas Article 83 of Law Number 32 Year 2004 concerning Regional Government regulates the following provisions:</p> <p>Article 83 paragraph (1)</p> <p>Campaign funds may be obtained from:</p> <ul style="list-style-type: none"> d. candidate pairs; e. nominating political parties and/or coalitions of political parties; f. non-binding donations from other parties, including donations from 	<p>Article 80 of Law Number 32 Year 2004 concerning Regional Government states the following provision: State officials, structural officials and functional officials in public office and village head shall be prohibited from making decisions and/or taking actions to the benefit or disbenefit of any one of the candidate pairs during the campaign period.</p>

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<p>individuals and/or private legal entities;</p> <p>Article 83 paragraph (2)</p> <p>A Candidate pair must have a special account for campaign funds and the intended account shall be registered to the Regional General Elections Commission (KPUD).</p> <p>Article 83 paragraph (3)</p> <p>The campaign fund donations as intended in paragraph (1) subparagraph c from individuals shall not exceed Rp50,000,000.00 (fifty million Rupiah) and from private legal entities shall not exceed Rp350,000,000.00 (three hundred and fifty million Rupiah).</p> <p>Article 83 paragraph (4)</p> <p>A Candidate pair may receive and/or</p>	

Written	It is supposed to be
<p>approve financing not in the form of money directly for campaign activities.</p> <p>Article 83 paragraph (5)</p> <p>Donations to a candidate pair exceeding Rp2,500,000.00 (two million and five hundred thousand Rupiah), either in the form of money or not, which can be converted into a value of money must be reported to the Regional General Elections Commission (KPUD) with respect to the amount of donations and identity of the donors.</p> <p>Article 83 paragraph (6)</p> <p>A Candidate pair shall submit a report on donations of campaign funds as intended in paragraph (3) and paragraph (5) to the Regional General Elections Commission</p>	

Written	It is supposed to be
<p>(KPUD) within 1 (one) day prior to the commencement of the campaign period and 1 (one) day following the end of the campaign period.</p> <p>Article 83 paragraph (7)</p> <p>The Regional General Elections Commission (KPUD) shall announce a report on donations of campaign funds of each candidate pair as intended in paragraph (6) to the public through the mass media one day after receiving the report from the candidate pair.</p>	

3. Whereas Article 116 paragraph (4) of Law Number 32/2004 has never been amended by Law Number 12 Year 2008 concerning the Second Amendment to Law Number 32 Year 2004 concerning Regional Government (hereinafter referred to as Law Number 12/2008). With respect to the provision on criminal sanctions, Law Number 12/2008 has only amended the criminal sanctions regulated in Article 115, as follows:
 - a. There paragraphs are added to the provision on criminal sanctions

in Article 115, namely paragraph (7), paragraph (8) and paragraph (9) by adding sanctions for the violations of forgery or giving false statements in relation to individual support and sanctions to general election organizers for not conducting factual verification of individual support;

- b. Criminal sanctions in Article 115 of Law Number 12/2008 are cumulative in nature, while previously in Law Number 32/2004, it could be cumulative or alternative in nature.
4. Reference to Article 83 has made Article 116 paragraph (4) of Law Number 32/2004 non-operational because as the reference of such Article causes Article 116 paragraph (4) of Law Number 32/2004 to become uncertain, so that legal certainty becomes unreachable.

Whereas legal uncertainty with one of its references of Article 116 paragraph (4) of Law Number 32/2004, has resulted in the confusion among the General Elections Supervisory Committees throughout Indonesia in processing and following-up violations committed by state officials, structural officials and functional officials in public office or village heads to the benefit or disbenefit of any one of the candidate pairs during the campaign period, while such violations are clearly prohibited by Article 80 of Law Number 32/2004 and injure the principles of democracy. Meanwhile, the General Elections Supervisory Committee as the first door of law enforcement of the integrated electoral criminal justice system

together with the Police and the Public Prosecutor's Office must enforce the applicable rules of law (supremacy of law) when handling a violation. The General Elections Supervisory Committee must be able to describe and prove 2 (two) sufficient preliminary evidence in the assessment of a violation prior to making a following-up to the Police.

When the General Elections Supervisory Committee is unable to enforce the legal rule due to an incorrect reference, the presence of such rule has injured the principle of legal certainty (legality principles) of a rule of law state as set out in Article 1 paragraph (3) of the 1945 Constitution stating that the state of Indonesia shall be a rule of law state. The rules of law regulated in the applicable Law must be operable.

Meanwhile, had Regional Head General Elections Supervisory Committee and law enforcement apparatuses been able to process and follow-up the violations committed by state officials, structural officials and functional officials in public office to the benefit of any one of the candidate pairs, the Constitutional Court would not have needed to be busy with investigating such violations as they would have been settled at the early stage by the existing legal institutions. The great number of violations in the hearings of the Constitutional Court has been due to the inability of the authorized legal institutions to settle such violations in accordance with laws and regulations. In addition to that, no criminal sanction can be imposed to the perpetrators and the violations cannot be adjudicated.

5. Whereas the incorrect reference in Article 116 paragraph (4) of Law Number 32/2004 has directly resulted in legal immunity of the state officials, structural officials and functional officials when they take actions and/or make decisions to the benefit or disbenefit of any one of the candidate pairs, although such actions and/or decisions are clearly prohibited in Article 80 of Law Number 32/2004. Therefore, Article 116 paragraph (4) of Law Number 32/2004 has given a special treatment before the law to state officials, structural officials and functional officials when they commit criminal acts in the General Elections. This condition has resulted in the violation of the principle of *similia similibus* or equality before the law expressly regulated in Article 28D paragraph (1) of the 1945 Constitution.
6. Whereas Article 116 paragraph (4) of Law Number 32/2004 regulating criminal sanctions cannot be used to indict state officials, structural officials and functional officials who act to the benefit or disbenefit of any one of the candidate pairs and also who have caused the injury of human rights as intended in Article 28D paragraph (1) of the 1945 Constitution stating that 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 community, as reporters or the General Elections Supervisory Committee, who find the relevant violations committed by state officials, structural officials and functional officials in

public office and village heads to the benefit or disbenefit of any one of the candidate pairs are unable to obtain legal certainty since the reports cannot be followed-up, cannot have access to justice, and such Article also becomes useless to be applied.

7. Whereas in its Decision Number 41/PHPU.D-VI/2008, the Constitutional Court has set out a universally followed principle of law and justice stating that “no person may get the benefit from any deviation and violation he/she has personally committed and no person may be harmed by any deviation and violation committed by another person” (*nullus/nemo commodum capere potest de injuria sua propria*). Accordingly, no candidate pair of the general election may get the benefit in the acquisition of votes as a result of a violation of the constitution and the principle of justice in the implementation of general elections.
8. Whereas Article 116 paragraph (4) of Law Number 32/2004 which cannot be applied also constitutes a form of injury to the principles of a rule of law state expressly regulated in Article 1 paragraph (3) of the 1945 Constitution stating that the state of Indonesia shall be a rule of law state. Any violation committed by Indonesian citizens in the context of a rule of law state must be accounted for by prioritizing the implementation of the principles of supremacy of law, equality before the law and due process of law.
9. Whereas the provisions on state officials, structural officials and functional

officials in public office and village head acting to the benefit or disbenefit of any one of the candidate pairs during the campaign period are regulated not only in Law Number 32/2004 concerning Regional Government, but they are also regulated in Law Number 42 Year 2008 concerning the Presidential Election (hereinafter referred to as Law Number 42/2008). The provisions on the prohibition for state officials, structural officials and functional officials in public office and village head from acting to the benefit or disbenefit of any one of the candidate pairs during the Presidential Election campaign period are regulated in Article 43 of Law Number 42 Year 2008:

Article 43

“State officials, structural officials and functional officials in public offices and village heads or other titles shall be prohibited from making decisions and/or taking actions to the benefit or disbenefit of any one of the Candidate Pairs during the campaign period.”

Elucidation of Article 43

“State officials” as intended in this Law shall include the President, Vice President, ministers/leadership of non-ministry government institutions, governors, deputy governors, regents, vice regents, mayors and vice mayors. Benefit or disbenefit from decisions/policies shall be based on a significant complaint and supported by evidence.”

10. Whereas Law Number 42/2008 regulates not only the prohibition from giving benefits to any one of the candidate pairs during the campaign period, but it also regulates the prohibition for state officials, structural officials and functional officials in public offices and village heads from acting to the benefit or disbenefit of any one of the candidate pairs prior to, during and after the campaign period as regulated in Article 44 of Law 42/2008:

Article 44

- (1) “State officials, structural officials and functional officials in public offices and other civil servants shall be prohibited from conducting activities leading to partiality for any candidate pair participating in the Presidential Election prior to, during and after the campaign period.”
- (2) “The prohibition as intended in paragraph (1) shall include meetings, invitations, appeals, calls or granting of gifts to civil servants within the purview of their working units, their family members and the community.”
11. Whereas Law Number 42/2008 also imposes criminal sanctions on state officials, structural officials and functional officials in public offices and Village Heads as well as members of the General Elections Commission (KPU), provincial General Elections Commission (Provincial KPU),

regency/municipal General Elections Commission (Regency/Municipal KPU), District Elections Committee (PPK), Voting Committee (PPS) and Overseas Elections Committee (PPLN). The aforementioned criminal sanctions are set out in Article 210, Article 211 and Article 212 of Law Number 42/2008:

Article 210

“Every member of the General Elections Commission (KPU), provincial General Elections Commission (Provincial KPU), regency/municipal General Elections Commission (Regency/Municipal KPU), District Elections Committee (PPK), Voting Committee (PPS) and Overseas Elections Committee (PPLN) deliberately making decisions and/or taking actions to the benefit or disbenefit of any one of the candidates or candidate pairs during the campaign period shall be subject to a minimum criminal sanction of imprisonment of 6 (six) months and a maximum criminal sanction of imprisonment of 36 (thirty-six) months and a minimum fine of Rp6,000,000.00 (six million Rupiah) or a maximum fine of Rp36,000,000.00 (thirty-six million Rupiah).”

Article 211

“Every state official deliberately making decisions and/or taking actions to the benefit or disbenefit of any one of the candidates or candidate pairs during the campaign period shall be subject to a minimum criminal

sanction of imprisonment of 6 (six) months and a maximum criminal sanction of imprisonment of 36 (thirty-six) months and a minimum fine of Rp6,000,000.00 (six million Rupiah) or a maximum fine of Rp36,000,000.00 (thirty-six million Rupiah).”

Article 212

“Every village head or other titles deliberately making decisions and/or taking actions to the benefit or disbenefit of any one of the candidates or candidate pairs during the campaign period shall be subject to a minimum criminal sanction of imprisonment of 6 (six) months and a maximum criminal sanction of imprisonment of 12 (twelve) months and a minimum fine of Rp6,000,000.00 (six million Rupiah) or a maximum fine of Rp12,000,000.00 (twelve million Rupiah).”

12. Whereas the regulation and criminal sanctions expressly set out in Law Number 42/2008 with respect to violations committed by state officials, structural officials and functional officials in public office and village head to the benefit or disbenefit of any one of the candidate pairs during the Presidential Election Campaign period indicate that even a President may be subject to a criminal sanction if the violation is to the benefit or disbenefit of any one of the candidate pairs in the Presidential Election.
13. Whereas the strict criminal sanctions also set out in Law Number 42/2008 is indicated by the imposition of cumulative sanctions (indicated by the

word “and). This is different from Law Number 32/2004 which imposes either cumulative or alternative sanctions (indicated by “and/or”).

14. Whereas based on the strict regulation and criminal sanctions set out in Law Number 42/2008, the Petitioner can conclude that a president may be subject to a criminal sanction for giving the benefit or disbenefit of any one of the candidate pairs during the campaign period and shall be subject to more severe criminal sanctions compared to the criminal sanctions regulated in Law Number 32/2004.

15. Whereas we can investigate into the incorrect reference in Article 116 paragraph (4) of Law Number 32/2004 based on the process of the formulation of Article 116 paragraph (4) of Law Number 32/2004 and the consistency of the substance regulated in Article 116 paragraph (4) of Law Number 32/2004.

a. The Process of the Formulation of Article 116 Paragraph (4) of Law Number 32 Year 2004

Law Number 32/2004 in lieu of Law Number 22 Year 1999 concerning Regional Government was initiated by the People’s Legislative Assembly (DPR), particularly in relation to the proposal for the regulation of direct regional head elections. In the Draft Law initiated by the People’s Legislative Assembly (DPR), dated June 2, 2004 constituting a initial draft of the People’s Legislative Assembly

(*vide* Exhibit P-1), criminal sanctions are set out in Article 123B through Article 123F of the initial draft of the People's Legislative Assembly (DPR) as implied in the opinion and statement of the Chairperson of Meeting on June 29, 2004 by Mister A. Teras Narang (which can be seen on page 1 of the Minutes of Meeting of the Special Committee/*vide* Exhibit P-2). Article 123B through Article 123F of the initial draft have become criminal sanctions as intended in Article 115 through Article 119 of Law Number 32/2004. In this matter, Article 123B of the draft has becomes Article 115 of Law Number 32/2004, Article 123C of the initial draft has become Article 116 of Law Number 32/2004, Article 123D of the initial draft has become Article 117 of Law Number 32/2004, Article 123E of the initial draft has become Article 118 of Law Number 32/2004 and Article 123F of the initial draft has become Article 119 of Law Number 32/2004. Based on the process of the investigation of the existence of the initial Draft Law to become Law Number 32/2004, a different reference to the same Article was discovered, namely Article 123C of the initial draft which subsequently became Article 116 paragraph (4) of Law Number 32/2004. Meanwhile, the references to other Articles on criminal sanctions, other than Article 116 paragraph (4) of Law Number 32/2004, are the same as the references to Articles on criminal sanctions in the initial draft of the People's Legislative Assembly (DPR). The following is a

comparison between Article 123C of the initial draft of the People's Legislative Assembly (DPR) and Article 116 paragraph (4) of Law Number 32/2004 having the same substance:

- i. Article 123C of the initial draft initiated by the People's Legislative Assembly subsequently becoming Article 116 paragraph (4) of Law Number 32/2004 reads:

“Any state officials, structural officials and functional officials in public office or any village head or other titles deliberately violating the provisions as intended in Article 441 shall be subject to a minimum criminal sanction of imprisonment of 1 (one) month or a maximum criminal sanction of imprisonment of 6 (six) months and/or a minimum fine of Rp600,000.00 (six hundred thousand Rupiah) or a maximum fine of Rp6,000,000.00 (six million Rupiah).”;

- ii. Article 441 of the initial draft reads:

“State officials, structural officials and functional officials in public offices and village heads or other titles shall be prohibited from making decisions and/or taking actions to the benefit or disbenefit of any one of the candidate pairs during the campaign period.”

- iii. Article 441 of the initial draft has the same wording as the

provision of Article 80 of Law Number 32/2004, namely:

“State officials, structural officials and functional officials in public offices or village heads shall be prohibited from making decisions and/or taking actions to the benefit or disbenefit of any one of the candidate pairs during the campaign period.”

- iv. Accordingly, Article 116 paragraph (4) of Law Number 32/2004 is supposed to refer to Article 441.

In the process of formulation of Law Number 32/2004, the spirit of all members of the Special Committee and the Government was clearly perceived that they agreed to include criminal sanctions in the Regional Head General Elections as part of the spirit of law enforcement in the Regional Government Law. One of the Members of the Special Committee, Drs.H.M. Sofwan Chudhorie, M.Si of the National Awakening Party (*Partai Kebangkitan Bangsa*) Faction, also gave a statement on the abuse of power (as it may be seen on page 19 of the Minutes of Meeting of the Special Committee/*vide* Exhibit P-2) conveying that criminal sanctions had to be intended for avoiding money politics or abuse of power.

- b. Inconsistency in the substance between the referring Article and the Article referred to

- i. Whereas Article 83 of Law Number 32/2004 referred to by Article 116 paragraph (4) of Law Number 32/2004 does not regulate the substance of criminal events with the subjects of perpetrators being state officials, structural officials and functional officials, but it only regulates the subjects of perpetrators being the candidate pairs and/or the campaign team. Meanwhile, Article 116 paragraph (4) of Law Number 32/2004 should have referred to Article 80 of Law Number 32/2004 which regulates prohibited criminal events by the subjects of perpetrators being state officials, structural officials and functional officials.
- ii. Whereas the prohibition substance as intended in Article 83 of Law Number 32/2004 is only set out in paragraph (3), namely the prohibition from receiving donations exceeding the provisions, either from individuals in the minimum amount of Rp50,000,000.00 (fifty million Rupiah) or from private legal entities in the maximum amount of Rp350,000,000.00 (three hundred and fifty million Rupiah), and the criminal sanctions of such prohibition have been regulated in Article 116 paragraph (6) of Law Number 32/2004 stating that “Any person giving or receiving the campaign funds in excess of the specified amount as

intended in Article 83 paragraph (3) of Law Number 32/2004 shall be subject to a minimum criminal sanction of imprisonment of 4 (four) months or a maximum criminal sanction of imprisonment of 24 (twenty-four) months and/or a minimum fine of Rp200,000,000.00 (two hundred million Rupiah) or a maximum fine of Rp1,000,000,000.00 (one billion Rupiah).

16. Whereas the spirit of the legislators is perceived in their wish for criminal sanctions to be imposed on state officials, structural officials and functional officials in public offices or village heads acting to the benefit or disbenefit of any one of the candidate pairs. However, the fact is that state officials, structural officials and functional officials in public offices and village heads acting to the benefit or disbenefit of any one of the candidate pairs cannot be subject to criminal sanctions or adjudicated due to the incorrect reference in Article 116 paragraph (4) of Law Number 32/2004 regulating criminal sanctions for state officials, structural officials and functional officials in public offices or village heads acting to the benefit or disbenefit of any one of the candidate pairs.
17. Whereas the actions and/or the decisions of state officials, structural officials and functional officials to the benefit or disbenefit of any one of the candidate pairs often use methods of intimidation and methods which cause fear among the community to freely vote, but such actions cannot

be subject to criminal sanctions or adjudicated as revealed in the hearing of the Constitutional Court set out in the following Decisions:

- a. **Decision of the Constitutional Court Number 28/PHPU.D-VIII/2010** states that systematic, structured and massive violations have been committed by the ranks and files of bureaucracy apparatus (Civil Servants) of Gresik Regency through the Service Office of Agriculture of Gresik Regency up to the ranks and files of Field Agricultural Extension Staffs by allowing for the participation of the Association of Farmers Group (*Gapoktan*) as well as the involvement of the Producer of *Petrobio* Fertilizer for the purpose of supporting Candidate Pair Number 5 (the Related Parties).

With respect to the violations committed by ranks and files of the Service Office of Agriculture of Gresik Regency, the Regional Head General Elections Supervisory Committee of Gresik Regency was unable to process and follow-up such violations due to the absence of criminal sanctions regulating such violations. Article 116 paragraph (4) of Law Number 32/2004 regulating such violations has incorrectly referred to an Article on criminal sanctions, so that Article 116 paragraph (4) of Law Number 32/2004 cannot be used by the Regional Head General Elections Supervisory Committee of Gresik Regency to process and follow-up such violations. Accordingly, the parties committing such violations cannot be heard

before the court due to the absence of Articles to indict such violations.

- b. **Decision of the Constitutional Court Number 22/PHPU.D-VIII/2010** states that the implementation of the Regional Head General Elections of Konawe Selatan Regency was filled with quite serious violations, so that re-voting was needed because the violations could be proved before the hearing of the Court to be systematic, structured and massive in nature which were committed prior to and during the polling. The organizers of the Regional Head General Elections or the related institutions in Konawe Selatan Regency were not serious in making a follow-up to the findings of violations by referring to the reasons which are merely formalistic in nature. The related legal institutions are often powerless when facing the *hegemony* of the local power, especially when it is worsened by the lack of knowledge and legal awareness of the community. The violations involving the power in Konawe Selatan were actually not only due to the powerlessness of the existing institutions, but also due to the weakness of laws and regulations, particularly Article 116 paragraph (4) of Law Number 32/2004 regulating criminal sanctions for state officials, structural officials and functional officials in public offices and village heads acting to the benefit or disbenefit of any one of the candidate pairs. The aforementioned Article 116 paragraph (4) of Law Number 32/2004

which has incorrectly referred to an Article has resulted in hegemony of power which allows a party to regulate as it wishes for the benefit of any one of the particular candidate pairs for the purpose of winning in the regional head and vice regional head General Elections. Even though such violations were reported by the community to the General Elections Supervisory Committee, or the General Elections Supervisory Committee discovered it, such violations still cannot be followed-up by the General Elections Supervisory Committee since the criminal sanctions set out in Article 116 paragraph (4) of Law Number 32/2004 cannot be used to indict such violations.

- c. **Decision of the Constitutional Court Number 209-210/PHPU.D-VIII/2010** states that based on the considerations and legal facts above, the Court considered that the argument of Petitioner I on the gradual direction given by the apparatuses of District and Sub-District to the Heads of Neighborhood Ward/Neighborhood Block (RT/RW) in Tangerang Selatan City which was forwarded to the residents in order to support Airin Rachmi Diany is proved and has legal grounds.

The reason for such violation gradually committed by the bureaucracy apparatus was that the Regional Head General Election Supervisory Committee of Tangerang Selatan City was

unable to process and follow-up the aforementioned report due to the incorrect reference in Article 116 paragraph (4) of Law Number 32/2004. In order to solve the aforementioned incorrect reference in Article 116 paragraph (4) of Law Number 32/2004, the Regional Head General Election Supervisory Committee of Tangerang Selatan City and the Regional Government of the Chairperson of BKD entered into a memorandum of understanding Number 03/Panwaslu-Kota TS/XI/2010 and Number 800/3000-BKD/XI/2010, with the substance that the Regional Head General Election Supervisory Committee and the Municipal Government of Tangsel would jointly supervise the participation of civil servants within the purview of the Municipal Government for the purpose of realizing the implementation of the Regional Head General Election which is Direct, General, Free, Confidential, Honest, and Just. However, such memorandum of understanding posed a problem due to the involvement of civil servants in every violation to be settled in a civil service administration manner. The civil service administration sanction did not deter the civil servants in Tangerang Selatan City due to the administration sanction was imposed by the relevant superior, as the fact was that the relevant superior and the officials in Tangerang Selatan City supported the candidate pair of Airin Rachmi Diany as evidenced in the hearing of the

Constitutional Court. Therefore, such violation has become increasingly systematic, structured and massive.

- d. **Decision of the Constitutional Court Number 33/PHPU.D-IX/2011** states that based on the facts and evidence revealed in the hearing, an involvement of civil servants, particularly district heads and village heads has occurred in a systematic, structured and massive manner in the Regional Head General Elections of Tebo Regency for the Related Parties to win. Following the Decision of the Constitutional Court, the Regional Head General Election Supervisory Committee of Tebo Regency attempted to make such violation to be processed as a finding. However, due to the incorrect reference in Article 116 paragraph (4) of Law Number 32 Year 2004 concerning Regional Government regulating criminal sanctions for the violation of the involvement of civil servants, district heads and village heads, such finding could not be processed any further.

- e. **Decision of the Constitutional Court Number 190/PHPU.D-VIII/2010** states that the implementation of the Regional Head General Election of Pandeglang Regency Year 2010 was filled with violations which could be evidenced before the hearing of the Court which were committed in a systematic, structured and massive manner shortly before the process of voting by Candidate Pair

Number 6. Such structured violations hierarchically involved government apparatuses of Governor, Regent, District Heads, Village Heads and other village apparatuses. In committing such violation, Candidate Pair Number 6 had systematically planned with good preparation as indicated by official letters instructing all village apparatus and the like to give structurally coordinated support. Such violation had an extremely massive impact as indicated by follow-ups in the form of letters, actions and even psychological intimidations to the government apparatus of Pandeglang Regency who also subsequently committed intimidations to the residents throughout Pandeglang Regency in order to vote for Candidate Pair Number 6 who was also the incumbent Regent.

Even though the Constitutional Court declared that such violation was a systematic, structured and massive violation, the General Elections Supervisory Committee of Pandeglang Regency could not enforce such rules because the rules in Article 116 paragraph (4) of Law Number 32/2004 setting out criminal sanctions against such violation cannot indict the actions committed by state officials, structural officials and functional officials in public offices and village heads to the benefit of any one of the candidate pairs. Similar to the Decision of the Constitutional Court on a similar violation, violations by a criminal act in General Elections which becomes the authority on the General Elections Supervisory

Committee to handle cannot be processed and followed-up due to the incorrect reference in Article 116 paragraph (4) of Law Number 32/2004. Article 116 paragraph (4) of Law Number 32/2004 referring to Article 83 of Law Number 32/2004 has resulted in legal uncertainty with respect to criminal sanctions to be applicable.

- f. **Decision of the Constitutional Court Number 144/PHPU.D-VIII/2010** states that a structured, systematic and massive violation in the Regional Head General Elections of Manado City has occurred. A systematic violation occurred since it was committed by the Related Parties mobilizing civil servants in a very organized, structured and well-planned manner since the early stage, namely by preparing meetings which involved service office heads, district heads, sub-district heads and the heads of the environments throughout Manado in order to support the Related Parties to become winners in the Regional Head General Elections of Manado City with intimidation in the form of dismissal of several environment heads and employees of the Regional Company of Manado City Market who refused to support the Related Parties. With respect to such violation, the Regional Head General Election Supervisory Committee of Manado City was unable to process and follow-up such case due to the incorrect reference in Article 116 paragraph (4) of Law Number 32/2004 regulating criminal sanctions for such violation which cannot be used to indict the violation

committed by such state officials, structural officials and functional officials in public offices and village heads. The reports given by the community and the findings by the Regional Head General Election Supervisory Committee of Manado City concerning such violation could not be processed and followed-up, causing all such cases of violations to be submitted to the Constitutional Court. Meanwhile, had the Regional Head General Election Supervisory Committee and law enforcement apparatuses been able to process and follow-up such violation, the Constitutional Court would not have needed to be busy with investigating such violations as they would have been settled at the early stage by the existing legal institutions.

18. Whereas with respect to intimidation actions, threat and the fear which used to be revealed in the hearing session on the Disputes over the Results of Regional General Elections (PHPUD) in the Constitutional Court as mentioned above, the Constitutional Court, in its Decision Number 45/PHPU.DVIII/2010, states that citizens shall have the voting right that constitutes human right and must be free from fear, pressure and threat in participating in the process of democratization, as mandated by Article 28G paragraph (1) of the 1945 Constitution stating that “Every person shall have the right to protect him/herself, his/her family, honor, dignity and property under his/her control, and shall have the right to feel secure and be protected from the threat of fear to do, or not to do something which constitutes human right” and in accordance with Article

30 of Law Number 39 Year 1999 concerning Human Rights stating that “Every person shall have the right to the feeling of security and protection against the threat of fear to do or not to do something.”

19. Whereas in its Decision Number 33/PHPU.D-IX/2011, the Constitutional Court has stated a firm stand that the Court is consistent with its previous decisions not giving any tolerance for violations in a structured manner involving officials and civil servants in the Regional Head General Elections for any one of the candidate pairs to win as stated in the previous decisions of the Court, namely, among other things, Decision on the Dispute over the Regional Head General Elections of Gresik Regency (*vide* the Constitutional Court’s Decision Number 28/PHPU.D-VIII/2010 dated June 24, 2010), Decision on the Dispute over the Regional Head General Elections of Surabaya City (*vide* the Constitutional Court’s Decision Number 31/PHPU.D-VIII/2010 dated June 30, 2010), Decision on the Dispute over the Regional Head General Elections of Manado City (*vide* the Constitutional Court’s Decision Number 144/PHPU.DVIII/ 2010 dated September 3, 2010), Decision on the Dispute over the Regional Head General Elections of Pandeglang Regency (*vide* the Constitutional Court’s Decision Number 190/PHPU.D-VIII/2010 dated November 4, 2010) and Decision on the Dispute over the Regional Head General Elections of Tangerang Selatan City (*vide* the Constitutional Court’s Decision Number 209-210/PHPU.D-VIII/2010 dated December 10, 2010). All of the aforementioned decisions are related to the involvement of civil

servants causing the Regional Head General Elections to be repeated.

20. Whereas even though the Constitutional Court has decided that the Regional Head General Elections should be repeated, criminal acts of violations by state officials, structural officials and functional officials in public offices and village heads to the benefit or disbenefit of any one of the candidate pairs still cannot be processed and indicted due to the incorrect reference in Article 116 paragraph (4) of Law Number 32/2004 which regulates criminal sanctions to be imposed on state officials, structural officials and functional officials acting to the benefit or disbenefit of any one of the candidate pairs.
21. Whereas if the incorrect reference in Article 116 paragraph (4) of Law Number 32/2004 is allowed to remain the same, then state officials, structural officials and functional officials in public offices and village heads are certainly free to commit violations to the benefit of any one of the candidate pairs in the Regional Head General Elections due to the absence of threat of criminal sanctions and that such violations cannot be heard before the court.
22. Whereas had Article 116 paragraph (4) of Law Number 32/2004 indeed referred to Article 80 of Law Number 32/2004, the Petitioner can assure that the General Elections Supervisory Committee would have been able to process all criminal acts of violations committed by state officials, structural officials and functional officials to the benefit or disbenefit of any

one of the candidate pairs.

Whereas based on the reasons stated by the Petitioner above, the Petitioner respectfully requests the Constitutional Court Justices, with all the wisdom and experience they possess, to kindly grant the petition for this judicial review of Law.

D. *PETITUM*

Whereas based on all the arguments described above and the evidence enclosed, the Petitioner hereby requests the Panel of Constitutional Court Justices to kindly pass the following decisions:

1. Accepting the petitioner's petition in its entirety;
2. Declaring that Article 116 paragraph (4) of Law Number 32 Year 2004 concerning Regional Government (State Gazette of the Republic of Indonesia Year 2004 Number 125, Supplement to the State Gazette Number 4437) has binding legal force insofar as it is understood as intended in Article 80 of Law Number 32 Year 2004 concerning Regional Government (State Gazette of the Republic of Indonesia Year 2004 Number 125, Supplement to the State Gazette Number 4437);
3. Declaring that Article 116 paragraph (4) of Law Number 32 Year 2004 concerning Regional Government (State Gazette of the Republic of Indonesia Year 2004 Number 125, Supplement to the State Gazette

Number 4437) shall wholly read as follows:

“Any state officials, structural officials and functional officials in public offices or village heads deliberately violating the provisions as intended in Article 80 shall be subject to a minimum criminal sanction of imprisonment of 1 (one) month or a maximum criminal sanction of imprisonment of 6 (six) months and/or a minimum fine of Rp600,000.00 (six hundred thousand Rupiah) or a maximum fine of Rp6,000,000.00 (six million Rupiah).”

4. Ordering this decision to be included in the Official Gazette of the Republic of Indonesia.

Or

1. Accepting the petitioner’s petition in its entirety;
2. Declaring that Article 116 paragraph (4) of Law Number 32 Year 2004 concerning Regional Government (State Gazette of the Republic of Indonesia Year 2004 Number 125, Supplement to the State Gazette Number 4437) has binding legal force insofar as it is understood as “Any state officials, structural officials and functional officials in public offices or village heads deliberately violating the provisions as intended in Article 80 shall be subject to a minimum criminal sanction of imprisonment of 1 (one) month or a maximum criminal sanction of imprisonment of 6 (six) months and/or a minimum fine of Rp600,000.00 (six hundred thousand Rupiah) or

a maximum fine of Rp6,000,000.00 (six million Rupiah).”

3. Ordering this decision to be included in the Official Gazette of the Republic of Indonesia.

Or

1. Accepting the petitioner’s petition in its entirety;
2. Declaring that Article 116 paragraph (4) of Law Number 32 Year 2004 concerning Regional Government (State Gazette of the Republic of Indonesia Year 2004 Number 125, Supplement to the State Gazette Number 4437) has binding legal force insofar as it is understood as “Any state officials, structural officials and functional officials in public offices or village heads deliberately making decisions and/or taking actions to the benefit or disbenefit of any one of the candidate pairs during the campaign period shall be subject to a minimum criminal sanction of imprisonment of 1 (one) month or a maximum criminal sanction of imprisonment of 6 (six) months and/or a minimum fine of Rp600,000.00 (six hundred thousand Rupiah) or a maximum fine of Rp6,000,000.00 (six million Rupiah).”
3. Ordering this decision to be included in the Official Gazette of the Republic of Indonesia.

Or, if the Constitutional Court is of a different opinion, we request for the decisions to be passed according to what is equitable and good (*ex aequo*

et bono).

[2.2] Whereas to evidence his arguments, the Petitioner has presented written instruments of evidence marked as exhibits P-1 through P-4, validated in the hearing on March 8, 2012 as follows:

1. Exhibit P-1 : Photocopy of the Draft Law Initiated by the People's Legislative Assembly or discussed in the Special Committee and the Working Committee;
2. Exhibit P-2 : Photocopy of the Minutes of Meeting of the Special Committee on Draft Law of Amendment to Law Number 22 Year 1999 concerning Regional Government;
3. Exhibit P-3 : Photocopy of the Minutes of Meeting of the Special Committee on Draft Law of Amendment to Law Number 22 Year 1999 concerning Regional Government;
4. Exhibit P-4 : Photocopy of the Draft approved and ratified by the 8th Open Plenary Session of the People's Legislative Assembly on September 29, 2004;

In addition to written evidence, the Petitioner in the hearing on April 4, 2012 has presented 3 (three) experts, namely **Bambang Eka Cahya Widodo**,

S.IP.,M.Si., (Head of the General Elections Supervisory Board), **Wirnyaningsih, S.Ag.,M.Si.**, (member of the General Elections Supervisory Board) and **Wahidah Suaib, S.Ag.,M.Si.**, (member of the General Elections Supervisory Board) who gave statements under oath, as follows:

1. Bambang Eka Cahya Widodo, S.IP.,M.Si

- Whereas Law Number 15 Year 2011 concerning General Election Organizer mandates that one of the duties and authority of the General Elections Supervisory Board is to receive and to follow-up reports and findings of alleged violations in the implementation of laws and regulations concerning General Elections. In the implementation of regional head and vice head Elections as regulated in Law Number 32 Year 2004 concerning Regional Government (Law Number 32/2004), Law Number 12 Year 2008 concerning Second Amendment to Law Number 32 Year 2004 concerning Regional Government (UU 12/2008), as well as other implementing regulations, there are 3 (three) types of violations, namely, administrative violation, violation of the code of conduct of the General Election organizer and criminal violation of General Elections.
- Whereas Law Number 32/2004 and Law 12/2008 provide for sanctions for criminal violations in regional head General Elections,

namely in Articles 115-119, the follow-up process of which is regulated in:

Article 111 paragraph (5) of Government Regulation Number 6 Year 2005, states that:

Paragraph (5) : "In the event of a report on a dispute having an element of criminal violation, it shall be forwarded to Investigation Apparatus for settlement".

Article 113 paragraph (1) of Government Regulation Number 6 Year 2005 states that:

Paragraph (1) : "Investigation of report on a dispute having an element of criminal acts as regulated in this Government Regulation shall be conducted in accordance with the Criminal Procedure Code".

Article 114 : "Examination of a criminal act in this regulation shall be performed by a court of general judicature".

- Whereas Law Number 32/2004 also regulates prohibitions in campaigns, including prohibition for state officials, structural

officials and functional officials in public offices and village heads from making decisions and/or taking actions to the benefit or disbenefit of any one of the candidate pairs, as regulated in Article 80 of Law Number 32/2004.

Article 80 of Law Number 32/2004 contains norms of prohibition in campaign during Regional Head and Vice Head General Elections. If such prohibition is violated, the state officials, structural officials and functional officials in public offices, and village heads being alleged of committing a violation, “cannot be processed as criminal violation of regional head general elections”. This is because Article 116 paragraph (4) of Law Number 32/2004 in its formulation regulates criminal sanctions for any state officials, structural officials and functional officials in public offices and village heads deliberately violating the provisions as referred to in Article 83 of Law Number 32/2004. Meanwhile, the substance of Article 83 of Law Number 32/2004 regulates the sources of campaign funds, obligations of candidate pairs to have a special account for campaign funds and to register it to the Regional General Election Commission (KPUD), the amount of donations for campaign funds as well as concerning its reporting to Regional General Election Commission.

- Whereas the General Elections Supervisory Board has received many reports and findings related to the involvement of state officials, structural officials and functional officials in public offices and village heads making decisions and/or taking actions to the benefit or disbenefit of any one of the candidate pairs. However, in its implementation, it has been difficult for the General Elections Supervisory Board to follow-up the findings and/or reports on violations conducted by state officials, structural officials and functional officials in public offices and village heads as intended in Article 80 of Law Number 32/2004, as criminal violations of regional head General Election to Police investigators.

Violations of campaigns prohibition as regulated in Article 80 of Law Number 32/2004 may be subject to the criminal sanction as regulated in Article 116 paragraph (4) of Law Number 32/2004, in the event that the article refers to Article 80 of Law Number 32/2004 rather than to Article 83 of Law Number 32/2004.

To make it clear, the following is the content formulation of Article 116 paragraph (1), Article 80, and Article 83 of Law Number 32/2004.

Article 80 of Law Number 32/2004

“State officials, structural officials and functional officials in public offices and village heads shall be prohibited from making decisions and/or taking actions to the benefit or disbenefit of any one of the candidate pairs during the campaign period.”

Article 83 of Law Number 32/2004 which is referred to by Article 116 paragraph (4) of Law Number 32/2004 states that:

Paragraph (1) : Campaign funds may be obtained from:

- a. Candidate pairs;
- b. Nominating political parties and/or coalitions of political parties;
- c. non-binding donations from other parties, including donations from individuals and/or private legal entities;

Paragraph (2) : A Candidate Pair must have a special account for campaign funds and the intended account shall be registered to the Regional General Elections Commission (KPUD).

Paragraph (3) : The campaign fund donations as intended in paragraph (1) sub-paragraph c from individuals shall not exceed Rp.50,000,000 (fifty million

rupiah) and from private legal entities shall not exceed Rp.350,000,000 (three hundred and fifty million rupiah).

Paragraph (4) : A candidate pair may receive and/or approve financing not in the form of money directly for campaign activities.

Paragraph (5) : Donations to a candidate pair which exceed Rp.2,500,000 (two million and five hundred thousand rupiah) either in the form of money or not, which can be converted into a value of money must be reported to the Regional General Elections Commission (KPUD) with respect to the amount of donations and identity of the donors.

Paragraph (6) : A candidate pair shall submit a report on donations for campaign funds as intended in paragraph (3) and paragraph (5) to the Regional General Elections Commission (KPUD) within 1 (one) day prior to the commencement of the campaign period and 1 (one) day following the end of the campaign period.

Paragraph (7) : The Regional General Elections Commission (KPUD) shall announce a report on donations of campaign fund of each candidate pair as intended in paragraph (6) to the public through the mass media one day after receiving the report from the candidate pair.

Article 116 paragraph (4) of Law Number 32/2004 stating:

Paragraph (4) : “Any state officials, structural officials, and functional officials in public offices and village heads deliberately violating the provision in Article 83 shall subject to a minimum criminal sanction of imprisonment of imprisonment of 1 (one) month or a maximum criminal sanction of imprisonment of 6 (six) months and/or a minimum fine of Rp.600,000.00 (six hundred thousand rupiah) or a maximum fine of Rp.6,000,000.00 (six million rupiah).

- Whereas, the substance of the content of Article 116 paragraph (4) of Law Number 32/2004 will be more accurate if refers to Article 80 of Law Number 32/2004, which provides that:

“State officials, structural officials and functional officials in public offices, and village heads shall be prohibited from making decisions and/or taking actions to the benefit or disbenefit of any one of the candidate pairs during the campaign period”. Consequently, actions of state officials, structural officials and functional officials in public offices and village heads taking actions to the benefit or disbenefit of any one of the candidate pairs during the campaign period can be imposed with criminal sanctions as criminal violations of regional head and vice head General Elections.

Whereas, Article 116 paragraph (4) which refers to Article 80 of Law Number 32/2004 can be used by the General Elections Supervisory Board to indict any state officials, structural officials and functional officials in public offices and village heads committing violations by taking actions to the benefit or disbenefit of any one of the candidate pairs, and also can be recommended to Police investigators in order to be processed as criminal acts.

Whereas, the General Elections Supervisory Board has conveyed to the Minister of State Secretary of the Republic of Indonesia concerning the issue of inconsistency in regulation of Article 116 paragraph (4) of Law Number 32/2004 stating that any state officials, structural officials and functional officials in public offices and village heads deliberately violating the provision as intended in

Article 83 shall be subject to a minimum criminal sanction of imprisonment of 1 (one) month or a maximum criminal sanction of imprisonment of 6 (six) months and/or a minimum fine of Rp.600,000.00 (six hundred thousand rupiah) or a maximum fine of Rp.6,000,000.00 (six million rupiah), with the article referred to, namely Article 83 of Law Number 32/2004 which principally regulates campaign funds. The General Elections Supervisory Board has conveyed such matter through a letter Number 402/Bawaslu/VI/2010, concerning the Request for an Original Copy of Law Number 32 Year 2004 concerning Regional Government, dated June 8, 2010, however, until now, the letter has not been replied by the Minister of State Secretary of the Republic of Indonesia. In addition to the letter, the General Elections Supervisory Board directly asked about this matter to the Minister of State Secretary of the Republic of Indonesia informally, and it was found that the original text of Law Number 32 Year 2004 was made precisely, without any typographic error in its reproduction.

- Whereas the General Elections Supervisory Board in any briefing to provincial and regency/municipal General Elections Supervisory Boards, they are briefed and directed to continue the follow-up to the violation of Article 80 of Law Number 32/2004 administratively to the authorized agencies in order to be followed-up. The Regional Head Election Supervisory Committee is also directed to give

statements related to this violation in its statements in the Electoral Dispute hearing at the Constitutional Court.

- Whereas in the Working Meeting of the Center for Integrated Law Enforcement (*Gakkumdu*) attended by Regency and Provincial General Elections Supervisory Committees, the Police and the Prosecutor's Office at Hotel Millennium on March 26-28, 2012, in its last recommendation, it was agreed that Article 116 paragraph (4) of Law Number 32/2004 has an incorrect reference, so that the elements of Article 116 paragraph (4) of Law Number 32/2004 cannot be fulfilled. Article 116 paragraph (4) of Law Number 32/2004 should have referred to Article 80 of Law Number 32/2004 rather than to Article 83 of Law Number 32/2004.

2. Wirdyaningsih, S.H., M.H.

- The General Elections Supervisory Board is mandated by Law Number 15 Year 2011 concerning General Election Organizer that one of its duties and authority, including to receive and to follow-up reports and findings related to alleged violations in the implementation of laws and regulations concerning general elections.
- Article 80 of Law Number 32 year 2004 concerning Regional Government regulates the prohibition for state officials, structural

officials and functional officials in public offices and village heads from making decisions and/or taking actions to the benefit or disbenefit of any one of the candidate pairs during the campaign period. The criminal provision in Article 116 paragraph (4) cannot be applied to violations during the campaign period because it does not refer to Article 80, so that the provision of Article 80 has no criminal sanction.

- In the Regional Head General Elections Year 2010, the General Elections Supervisory Board received 1767 reports on regional head election violations, consisting of 1179 reports (66.72%) on criminal violations, 572 reports (32.37%) on administrative violations and 16 reports (0.91%) on violations of the code of conduct. Based on the recapitulation data, the trends of administrative violations during the campaign period were:
 - a) Installation of visual aids at places in violation of the regulations.
 - b) The use of state facilities, such as schoolyards and office cars, the use of facilities of the state/position.
 - c) Involvement of Civil Servants or state officials for campaigns and to perform orations for the election of a candidate pair.
 - d) Social activities ultimately intended for campaign purposes.

e) Rallies or processions using vehicles on the road.

In addition, the trends of general election criminal violations at the campaign were:

(a) Money politics in order to influence voters.

(b) Neutrality of Civil Servants/Regional Government Apparatuses.

(c) Campaign beyond schedule.

- Subsequently, during the Regional Head General Election 2011, the General Elections Supervisory Board received 1718 reports on violations, consisting of 998 reports (59%) on criminal violations, 565 reports (32%) on administrative violations and 155 (9%) reports on violations of the code of conduct. Based on the recapitulation data, the trends of administrative violations during the campaign period were:

(a) Installation of visual aids not in accordance with the provisions of laws and regulations;

(b) Campaigns beyond schedule;

(c) Involvement of Civil Servants in campaigns;

- (d) Changes of campaign locations without any notice to the General Election Commission (KPU);
- (e) Involvement of minors.

Meanwhile, the trends of general election criminal violations at the campaign stages were:

- (a) Money politics in order to influence voters;
 - (b) Destruction of campaign attributes;
 - (c) The use of state facilities;
 - (d) Covert campaigns/beyond the determined schedule;
 - (e) Black campaign;
 - (f) Partiality of Civil Servants.
- Subsequently, experts conveyed the details of violation cases in Regional Head General Elections 2010 and 2011 violations as included in Article 80 of Law Number 32 Year 2004:

(a). Lamongan Regency (2010)

Whereas in the report Number 037/D-3.3/PANWASLUKADA/III/2010, it was reported that village heads gathered their staffs to be assigned as a campaign

team and promised to give money to the voters. The Regional Head General Elections Supervisory Committee in Lamongan Regency could follow-up the report as criminal act.

(b). Indramayu Regency (2010)

Wastono reported to General Elections Supervisory Committee in Indramayu Regency using Form A1 Number 78/Panwaslu.Kada/VIII/2010, dated August 12, 2010 that the head of Arahau sub-district attended and participated in a campaign for candidate pair of Andi on August 6, 2010. The General Elections Supervisory Committee sent a letter to Indramayu Regent in order to follow-up the violation in accordance with the applicable provisions, and it could not be followed-up as criminal act of general elections.

Wastono reported to the General Elections Supervisory Committee of Indramayu Regency using Form A1 Number 91/Panwaslu.Kada/VIII/2010, dated August 23, 2010, that the Village Head of Arahau Kidul (H Sutoni Yahya) attended and participated in a Campaign for candidate pair of Andi, on August 6, 2010. The General Elections Supervisory Committee forwarded the matter to the General Elections

Commission (KPU) of Indramayu Regency, and it could not be followed-up as criminal act of general elections.

(c). Bantul Regency (2010)

First, Tentrem Widodo reported to the General Elections Supervisory Committee in Bantul Regency using Form A1 Number 270/007/Panwaspemilukada.Btl/V/2010 dated May 4, 2010 that in his speech, the Principal of Public Senior High School (SMAN) 01 of Bantul suggested to support the Candidate Pair of Sriweadarti and Sumarno. The speech was delivered during the handover of ISO Certificate and the inauguration of the Building in SMAN 01 Bantul, on May 3, 2010. The General Elections Supervisory Committee forwarded the matter to the General Elections Commission (KPU) of Bantul Regency and it could not be followed-up as a criminal act of general elections.

Second, Agus Surnartono reported to the General Elections Supervisory Committee in Bantul Regency using Form A1 Number 270/008/Panwaspemilukada.Btl/V/2010 dated May 7, 2010 that the Head of Food Resilience and Extension Agency (BKPP) in Bantul Regency signed letter Number 135/157 of the Food Resilience Agency and Extension Agency which principally assigned Extension Agent of Civil

Servants and Non-Civil Servant Staff (THL TB) of Agriculture extension agents throughout the Regency of Bantul is to lead and encourage the farmers to support the candidate pair of Idham Samawi SE who would continue the leadership as the Regent. The General Elections Supervisory Committee forwarded such matter to the General Election Commission (KPU) of Bantul Regency and recommended it to the Regional secretary of Bantul Regency, and it could not be followed-up as criminal act of general elections.

Third, M. Yusuf Hamdani reported to the General Elections Supervisory Committee of Bantul Regency using Form A1 Number 270/009/Panwaspemilukada.Btl/V/2010 dated May 13, 2010 that the Regent of Bantul Regency (Idham Samawi) attended and gave a speech in an open public meeting of candidate pair Number 2, Sriwedarti and Sumarno, while the campaign leave had not been granted by the governor. In his speech, the Regent of Bantul Regency suggested to support Candidate Pair of Sriwedarti and Sumarno. The General Elections Supervisory Committee forwarded the matter to the General Election Commission (KPU) of Bantul Regency and it could not be followed-up as a criminal act of general elections.

Fourth, Sri wardani reported to the General Elections Supervisory Committee of Bantul Regency with Form A1 Number 270/009.c/PanwasPemilukada.Btl/V/2010. dated May 21, 2010 that on Thursday, May 13, 2010 the Village Head of Baturetno, Bangun Tapan Sub-District, Bantul Regency invited the residents who were tenants of village land to gather in a meeting. In the meeting, the Village Head of Baturetno warned if the tenants did not vote for Sukadarma, they would be banned to rent the land in that area as included in *Kedaulatan Rakyat* newspaper on Friday, May 14, 2010. The General Elections Supervisory Committee forwarded the matter to the General Election Commission (KPU) of Bantul Regency and it could not be followed-up as a criminal act of general elections.

(d). Rejang Lebong Regency (2010)

In the Report of the General Elections Supervisory Committee of Rejang Lebong Regency Number 12/Laporan/Panwaslu-Kada/RL,/2010 dated June 17, 2010, Sutisna (the Village Head) wore a clothing of one of the candidate pairs in the Regional People's Legislative Assembly Plenary Meeting of Rejang Lebong Regency, on June 16, 2010. The General Elections Supervisory

Committee in Rejang Lebong Regency forwarded the matter to the General Election Commission (KPU) of Bantul Regency and it could not be followed-up as a criminal act of general elections.

(e). Pandeglang Regency (2010)

First, report of the General Elections Supervisory Committee Number 4/Panwaskab-Pdg/IX/2010 dated September 22, 2010, in the event of *halal bihalal* of DPC APDESI (Leadership Council Branch of Rural Government Association Indonesia or *Dewan Pimpinan Cabang Asosiasi Pemerintahan Desa Indonesia*) started from September 22, 2010 and subsequently in a number of districts in Pandeglang Regency involving Village Heads and/or with the Village Heads conducting campaigns for Candidate Pair Number 5 (Hj. Irma Narulita and H. Apud Mahpud) as well as campaigns in places of education. The General Elections Supervisory Committee could not follow-up such matter as a criminal act of general election.

The second was a violation by the Governor, the Regent and the Village Heads, with the existence of official letters instructing all village apparatuses and other functions to support Candidate Pair Number 6. However, enforcement

could not be performed with respect to such violation by the General Elections Supervisory Committee in Pandeglang Regency due to the provision of Article 116 paragraph (4) of Law Number 32 Year 2004 having an incorrect reference to Article 83 which had lead to legal uncertainty.

(f). Gresik Regency (2010)

Civil Servants (PNS) of the Agriculture Service Office in Gresik up to the ranks and files of Field Extension Agents of Agriculture involving including the Association of Farmers' Groups and Petrobio Fertilizer Manufacturer to support Candidate Pair Number 5. The Regional Head General Elections Supervisory Committee of Gresik Regency could not follow-up such violation due to wrong reference concerning criminal sanctions in Article 116 paragraph (4) regulating such violation.

(g). Tangerang Selatan Municipality (2010)

During the Regional Head General Elections in Tangerang Selatan in 2010, there was hierarchical mobilization of Sub-District and District apparatuses up to the Heads of Neighborhood Ward/Neighborhood Block in order to support one of the candidate pairs of Mayor and Vice Mayor namely,

Airin Rachmi Diany. Violations committed hierarchically by the Bureaucracy apparatuses could not be processed and followed-up by the General Elections Supervisory Committee of Tangerang Selatan Municipality due to incorrect reference in Article 116 paragraph (4) of Law Number 32 Year 2004. In order to address this incorrect reference issue, the General Elections Supervisory Committee in Tangerang Selatan agreed with the Regional Government, the Head of the Regional Personnel Agency (BKD) to jointly supervise the participation of Civil Servants within the purview of municipal Government through the imposition of civil service administration sanctions by the relevant superior for the realization of direct, general, free, secret, honest, just Regional Head General Elections. However, such matter created new problems since the relevant superior and the officials in Tangerang Selatan Municipality supported the Candidate Pair Airin Rachmi Diany instead.

(h). Konawe Selatan Regency (2010)

Whereas systematic, structured and massive violations occurred before and during the vote count period. The Regional Head General Election Organizer as well as the relevant institutions in Konawe Selatan Regency were

powerless to face the issue involving more powerful parties in the local area due to not only the lack of knowledge and lack of legal awareness of the community, but also due to the weakness in laws and regulations which worsened the condition, particularly, Article 116 paragraph (4) of Law Number 32 Year 2004 with its incorrect reference and causing the more powerful parties to have more freedom to act in favor of one of the candidate pairs to win the competition of Regional Head and Vice General Elections in Konawe Selatan Regency.

(i). Manado Municipality (2010)

The (incumbent) Mayor of Manado gathered the heads of districts and sub-districts in Manado Municipality and the teachers to support the incumbent at the house of the Head of National Unity, Politics and Public Protection (*Kesbangpol Linmas*) of Manado Municipality. The General Elections Supervisory Committee could not follow-up the matter as a criminal act of general election.

(j). Banten Province (2010)

At the stage of candidate stipulation and before the campaign, the Regional secretary of Banten Province issued

a circular letter instructing the Regional Head of Banten Province, the Regional Working Unit (SKPD), and State-Owned Enterprises (BUMN) in Banten Province to give birthday greetings containing the sentence “Continuing the Development of Banten (*Teruskan Pembangunan Banten*)” being the campaign slogan of Candidate Pair Number 1. The Regional Head General Elections Supervisory Committee in Banten Province forwarded such alleged administrative violation to the President *cq.* The Minister of Home Affairs in Letter Number 003/DIV-PLGN/317/PANWASLUKADABTN/X/2011, concerning the Forwarding of Report on Regional Head General Election Administrative Violations in Banten Province, dated October 28, 2011. Based on the result of case conference with the Integrated Law Enforcement (*Gakkumdu*) unit, dated October 25 and 28, 2011, the alleged criminal violation of General Election was declared to have insufficient evidence.

Thereafter, prior to the campaign period, during the launching of *F-KTP* on September 30, 2011, H. Arif R. Wismansyah, the Vice Mayor of Tangerang Municipality was suspected to hold a campaign beyond schedule leading to the support for Candidate Pair Number 2. This alleged criminal violation of regional head general election was

reported to the Resort Police of Tangerang Municipality with Receipt of Complaint Report Number LP.K/963/X/2011/PMJ/Restro Tangerang Municipality, dated October 17, 2011.

At the stage of campaign, on October 06, 2011, the Agency for Disaster Mitigation of Banten Province ordered 1,000 pieces of "Atut-Rano shirts" in the value of Rp5,500,000,- (five million and five hundred thousand rupiah). This could be proven by the order receipt, assignment letter and receipt in the name of the Agency for Disaster Mitigation of Banten Province. The Alleged Administrative Violation was forwarded to the Governor of Banten Province with copies to the Minister of Home Affairs of the Republic of Indonesia, the Minister of State for Administrative Reform of the Republic of Indonesia (Letter Number 003/DIV-PLGN/317/PANWASLUKADA-BTN/X/2011, concerning Forwarding of Report on Regional Head General Election Administrative Violations in Banten Province, dated October 28, 2011). Meanwhile, based on the result of case conference with the INTEGRATED LAW ENFORCEMENT unit on October 25, 2011 and October 28, 2011, the alleged criminal violation of General Election was declared to have insufficient evidence.

Whereas on Wednesday, October 12, 2011 located at Hall Yard of Serang Regency, the Regent of Serang, Ahmad Taufik Nuriman, the Governor of Banten Province, Hj. Ratu Atut in a series of events of Anniversary of Serang Regency and the National Family Planning Coordinating Board (BKKBN) distributed nine basic necessities, such as instant noodle together with campaign attributes of Candidate Pair Number 1. The General Election Supervisory Committee could not follow-up the report because the witness did not personally see the event and the witness was at a distant location from the location of such event so that it was impossible for the witness to clearly see and hear about the event.

Whereas on October 20, 2011, at 17.30 West Indonesia Time (WIB), the General Election Supervisory Committee in Banten Province received a report on alleged violations of Regional Head General Election, Registration Number 003/DIV-PLGN/027/Panwaslukada-Btn/X/2011, in the name of the Reporter, Irfan Rifa'i, SH, in the form of alleged campaign with the distribution of 50 sacks of cement and a cash cheque in the amount of Rp.20,000,000,- (twenty million rupiah) as well as the suspected distribution of veils

by H. Makmun Syahroni (Member of the Regional People's Legislative Assembly of Serang Regency) and Hj. Ratu Atut in the event of *halal bilhalal* in front of the District Office of Anyer, Serang Regency which involved all Village Heads of Anyer District, Sub-District Heads of Anyer, Polling Committee (PPS) and Voting Administrator Group (KPPS) of Anyer District and the members of Family Welfare Unit (PKK) of Anyer, on October 17, 2011.

(k). Tebo Regency (2011)

On February 24, 2011, Village Heads and Civil Servants were involved in a campaign. Several Village Heads of Tebo Regency participated in a campaign for one of the candidate pairs and the wife of District Head R. Bukang held a campaign to the housewives as members of *yasinan*. This report was not followed-up since the report failed to meet the elements/insufficiency of evidence.

On March 15, 2011, District Head of Rimbo Bujang was at that time given money in the amount of Rp.50, 000.00 by the Head of District in order to ensure the success of Yopi-Sapotom. The General Election Supervisory Committee did not follow-up the matter since it failed to meet the elements.

(l). Pekanbaru Municipality (2011)

District Head of Tampan and Sub-District Head of Delima in Pekanbaru Municipality were reported to have signed *silaturahmi* invitation of "PAS" (Candidate Pair Number 1). Thereafter, the report was forwarded by the General Election Supervisory Committee to the General Election Commission (KPU) of Pekanbaru Municipality as an administrative violation of Article 80 of Law Number 32 Year 2004, namely in Letter Number 10/Panwaslu-Kada/V/2011, on May 27, 2011.

The Regent, Indragiri Hilir (Mr. Indra Mukhlis) was reported to perform singing and music performing activities on a stage during the campaign of Candidate Pair Number 2 for more than 7 (seven) songs. The General Election Supervisory Committee then forwarded such matter to the General Election Commission (KPU) of Pekanbaru Municipality with letter Number 09/Panwaslu-Kada/V/2011, dated May 25, 2011. The provisions violated were in Article 80 of Law Number 32 Year 2004 being only an Administrative violation.

In addition, there was a case of Pekanbaru Mayor (Herman Abdullah) who suggested to choose one of the candidate pairs beyond the campaign schedule. Thereafter, The

General Election Supervisory Committee forwarded the report on such violation to the General Election Commission (KPU) in Pekanbaru Municipality with letter Number 19/Panwaslu-Kada/V/2011 with violated Provisions in Article 80 of Law Number 32 Year 2004.

The aforementioned three reports were not followed-up by the General Election Commission (KPU) of Pekanbaru Municipality.

(m). Kuantan Singingi Regency (2011)

Based on the Report Number 07/Panwaslu-Kada-KS/III/2011 dated February 16, 2011, the District Head of Sei Pinang gave a speech before the public damaging the reputation of Candidate Pair Number 2. The General Election Supervisory Committee gave a warning with respect to such matter.

(n). Tuban Regency (2011)

The General Election Supervisory Committee received Report Number 001/II/ST/02/2011 dated February 15, 2011 concerning mobilization of Civil Servants for the victory of Candidate Pair Number 2 on the occasion of Infrastructure Development Implementation Socialization in Tuban by inviting Village Apparatuses, community leaders involving

the district heads, the heads of service offices, the heads of agencies and other government agencies.

The General Election Supervisory Committee also received Report Number 074/Panwaslukada.Kab/II/2011 that Inspectorate Employees in Tuban Regency conducted a covert campaign in consultation and monitoring of ADD funds in Tegalrejo Village, Widang District. This report could only be forwarded by the General Election Supervisory Committee to the General Election Commission (KPU) of Tuban Regency.

In addition, it was also reported in report Number 090/Panwaslukada.Kab/II/2011 dated February 24, 2011 that there was a violation of mobilization of civil servants by the District Head of Kenduruan and the Head of Voting Administrator Group at Polling Station 4 of Tawaran Village, Kenduruan District. However, the report was not followed-up since it exceeds the time limit determined by the Law.

- Whereas by referring to the foregoing description, the General Election Supervisory Committee could not apply Article 116 paragraph (4) of Law Number 32 Year 2004 for the sanction for violations of Article 80 of Law Number 32 Year 2004. Therefore, the General Election Supervisory Committee could not follow-up such

violation through the Integrated Law Enforcement Center or to forward it directly to the Police Investigators because of non-fulfillment of the elements of criminal act of General election. In enforcing Article 80 of Law Number 32 Year 2004, the General Election Supervisory Committee could only follow-up the administrative violation by forwarding the matter to the authorized institution. However, the sanction for this administrative violation could not be maximized due to slow process and indication of the absence of neutrality in considering responding to the recommendations from the General Election Supervisory Committee.

3. Wahidah Suaib, S.Ag.,M.Si

- Whereas in *Bawaslu*, the Expert was the coordinator of the Supervision Division. In the implementation of supervision, they should follow active supervision and emphasized to the general election supervisory committee that the supervision was dynamic, it had to observe, not only seeing but giving details, being more careful in reporting matters to the general election supervisory committee in any meeting.
- Whereas, the Expert always emphasized that success indicators of supervision was not about numbers of violations being processed, but the implementation of general elections in accordance with the

regulations and which had to be started with the capability of the general election supervisory committee to detect potential violations, as well as the capability of the general election supervisory committee to prevent violations. If it has been prevented and violations still occur, then a strict action must be taken in accordance with the existing regulation.

- Whereas based on the Experience in legislative general election and the Presidential election, the expert finally determined four special issues during the Regional Head General Election, which became the attention in supervision, being special issues related to four extremely massive violations and rampant cases which, however, required special expertise to investigate and process them, namely 1. Money politics, 2. Misuse of position, 3. Use of state facilities, and 4. Manipulation of sources of funds and the report on campaign funds.
- Whereas in relation to Article 80 of Law Number 32/2004 concerning the misuse of position, Law Number 32/2004 contains at least three articles expressly regulating the prohibition of the misuse of position and the use of state facilities. Article 78 paragraph h of Law Number 32/2004 prohibits the use of facilities and budget of the government and regional government. Article 79 of Law Number 32/2004 regulates the prohibition involvement of

justices from all judicature, officials of BUMN and BUMD, structural officials as well as functional officials in public offices as well village heads. Furthermore, paragraph (3) of Law Number 32/2004 asserts the regulation of campaign leave for state officials who will conduct a campaign. It has been asserted that there should be no use of facilities related to their positions, that a leave shall not be borne by the state, and that the duration and schedule of the leave have to be based on considerations of the duties regional government administration.

Furthermore, Article 79 paragraph 4 of Law Number 32/2004 states that candidate pairs shall be prohibited from involving Civil Servants, members of the Indonesian Armed Forces (TNI) and members of state Police as participants in campaigns and as campaigners in regional head and vice head general elections. Then it leads to Article 80 of Law Number 32/2004 stating that state officials, structural officials and functional officials in public offices and village heads shall be prohibited from making decisions and/or taking actions to the benefit or disbenefit of any one of the candidate pairs during the campaign period.

The Division of Supervision of the General Elections Supervisory Board disclosed in each form that there are two weaknesses in the Law *a quo* in relation to the regulation on the prohibition of the use

of state facilities and the misuse of position. The first weakness is that this regulation will only be applicable during the campaign period, while such practices occurred at every stage, attempts of manipulation of the number of voters frequently occurred at the stage of Permanent Voters' List (DPT), backdating, a person's presence being backdated, the presence of a person in a place to increase the number of voters and the attempts by officers for increasing the number of voters being unlikely to be free as there were usually transactions there. Such matter also occurred at the stage of nomination, with any staff of KPU which would continue to pass any candidate pairs that had been strongly indicated to be ineligible. The expert is opinion that it is probably not for free; all being money politics, misuse of position.

Furthermore, the second weakness found in Law a quo namely in the Law *a quo* in is in Article 80 which provides for a strict prohibition but without sanctions. The regulation or prohibition is ineffective and it obviously has a very broad impact in the field. It can be proven that every time the division of supervision held the Coordination Meetings of Supervision Preparation, Supervision Evaluation, it would become the main issue. The General Election Supervisory Committee was annoyed because those were the actual practices in the field, with structural functional officials as well as village heads acting to the benefit or disbenefit of a certain

candidate pair; while the general election supervisory committee was powerless without the regulation on criminal sanctions.

What happened in the community who did not understand the substance of the regulation on criminal provisions was that they would blame the general election supervisory committee because it was the reality seen by the community. With respect to the community's sense of justice, they saw violations while the general election supervisory committee was incapable and powerless to address them. This matter becomes their major concern.

Concerning the challenge of the regulation which is not strict and which has an incorrect reference, being termed wrongly addressed, the division of supervision is certainly challenged on how to prevent violations. A common step for preventing violations is socialization. Socialization would assert what the regulations, the prohibition as well as the sanctions are like.

With respect to Article 80 having no sanction, the expert finally offered a supervision strategy to the general election supervisory committee that when a criminal process act cannot be conducted legally, an attempt of sanction enforcement must be applied and maximized in the community by publicizing any structural officials and functional officials taking actions to the benefit or disbenefit of any candidate pair. The expectation of the expert through such

widespread and repeated publicity is that there will be community collective memory in order to try to assess which candidate pairs have committed many violations and have misused their authority and which ones who are relatively clean and committing a few violations.

The expert hopes that the community's awareness will be trained although thereafter in practice, the community's awareness which has developed will be destroyed by promises prior to the D-day. This is the greatest challenge which the general election supervisory committee must face.

The second, the general election supervisory committee shall continue to process such cases, but it shall continue to coordinate with the leaders or superiors of the officials committing the violations. Finally, the expert encourages the enforcement of maximum sanctions as provided for in other Laws.

Related to the facts, the expert has reports on results of the supervision coordination meetings conveying such matters, considering the Regional Head General Elections which will be implemented this year. These violations are caused not merely by the misuse of position but also by the extremely adverse impact on the state finance to the extent that there have been no sanctions for such violations.

[2.3] Whereas in the hearing on April 4, 2011, the Government's statement was heard, explaining as follows:

Substance of the Petition.

Referring to the petition of the Petitioner substantially stating that the implementation of the provisions in Article 116 paragraph (4) of Law Number 32 Year 2004 concerning Regional Government (Law Number 32/2004) is inconsistent with the provisions in the 1945 Constitution for the following reasons:

1. Whereas the Petitioner has received complaints from the General Election supervisory committee throughout Indonesia that the provisions of Article 116 paragraph (4) of the Law *a quo* cannot be applied to follow-up any general election criminal violation committed by state officials, structural officials and functional officials taking actions and/or making decisions to the benefit or disbenefit of certain candidate pairs to the Police.
2. According to the Petitioner, Article 116 paragraph (4) of the Law *a quo*, has incorrectly included a phrase, namely as intended in Article 83, while the phrase is supposed to be as intended Article 80. Because Article 83 does not regulated the substance of the criminal act by state officials, structural officials and functions officials, it only regulates the subject of candidate pairs and/or campaign teams.

According to the government, it needs to be questioned whether the Petitioner is appropriate or not as a party considering that his constitutional right and/or authority has been impaired due to the coming into effect of the provisions of Article 16 paragraph (4) of Law Number 32/2004, and also whether or not the intended constitutional is specific, special and actual or at least pursuant to logical reasoning, it can be assured of occurring, and the *causal verband* between impairment and the coming into effect of the Law petitioned for review.

The government wholly leaves it to the Panel of Constitutional Court Justices to consider and assess whether or not the Petitioner has legal standing, due to the coming into effect of the provisions in Article 36 paragraph (1) and paragraph (2) of Law Number 32/2004 as provided for in Article 51 paragraph (1) of Law Number 24 Year 2003 concerning the Constitutional Court as amended by Law Number 8 Year 2011 concerning Amendment to Law Number 24 Year 2003 concerning the Constitutional Court as well as based on previous decisions of the Constitutional Court.

With respect to the aforementioned reasons of the Petitioner, the Government may give the following explanation:

- a. Whereas any norms are formulated for certain purpose and objective, and therefore they should be adjusted to the direction of legal politics. Formulation of complete norms should have been made and should include prohibitions, permissions and dispensations. Prohibitions and

orders must be completed with a sanction system in order to apply the intended norms effectively.

- b. Whereas the norms in Article 80 of Law Number 32/2004 include the prohibition for state officials, structural officials and functional officials in public offices and village heads from making decisions and/or taking actions to the benefit or disbenefit of any one of any one of the candidate pairs during the campaign period. Considering the nature of norm formulation being in the form of prohibition, then the intended norm must be completed with a sanction system.
- c. Whereas if it is viewed from its construction, the prohibition intended in Article 80 of Law Number 32/2004 should have been parallel with the sanction system set out in Article 116 paragraph (4) of Law Number 32/2004. This construction is needed so that the norm *a quo* can be implemented effectively. There is a need to regulate the placement of the prohibition in parallel to its sanction system.
- d. Although the Petitioner states that the norm *a quo* is inconsistent with the 1945 Constitution, according to the Government, the original intent or the intention of norm formulation is to form an integral part to make Article 80 of Law Number 32/2004 complete. Therefore, the norm is actually not inconsistent with the 1945 Constitution, if the reference is changed into as *intended in Article 80 of Law Number 32/2004*.

Based on the statements and arguments above, the Government requests the Panel of the Constitutional Court Justices examining, deciding upon and hearing the petition for review of provision of Article 116 paragraph (4) of Law Number 32/2004 to pass the following decisions:

1. Accepting the Government statement in its entirety;
2. Declaring the provision of Article 116 paragraph (4) of Law Number 32 Year 2004 concerning Regional Government inconsistent with the provisions of the 1945 Constitution;
3. Rejecting the petition for review of the Petitioner or at least declaring that the petition for review of the Petition cannot be accepted, or at least declaring the provision of the article *a quo* still consistent with the 1945 Constitution to the extent that it shall refer to Article 80 of Law Number 32 Year 2004 concerning Regional Government.

[2.4] Whereas on April 12, 2004, the petitioner has submitted his conclusion to Registrar's Office of the Court as completely included in the case file;

[2.5] Whereas in order to shorten the description in this decision, all matters which occurred in the hearing are included in the minutes of the court hearing and shall constitute an inseparable and integral part of this Decision;

3. LEGAL CONSIDERATIONS

[3.1] Whereas the purpose and objective of the petition are to review the constitutionality of Article 116 paragraph (4) of Law Number 32 Year 2004 concerning Regional Government (State Gazette of the Republic of Indonesia Number 2004 Number 125, Supplement to State Gazette of the Republic of Indonesia Number 4437, hereinafter referred to as Law Number 32/2004) under the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution);

[3.2] Whereas prior to considering the substance of the petition, the Constitutional Court (hereinafter referred to as the Court) will first consider the following two matters, namely:

- a. Authority of the Court to hear the petition *a quo*;
- b. Legal standing of the Petitioner to file the petition *a quo*;

With respect to the aforementioned two matters, the Court is of the opinion, as follows:

Authority of the Court

[3.3] Whereas pursuant to Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution), Article 10 paragraph (1) sub-paragraph a of Law Number 24 Year 2003 concerning the Constitutional Court as amended by Law Number 8 Year 2011 concerning Amendment to Law Number 24 Year 2003 concerning the

Constitutional Court (State Gazette of the Republic of Indonesia Year 2003 Number 70, Supplement to State Gazette of the Republic of Indonesia Number 5226) hereinafter referred to as the Constitutional Court Law and Law Number 48 Year 2009 concerning Judicial Power (State Gazette of the Republic of Indonesia Year 2003 Number 157, Supplement to State Gazette of the Republic of Indonesia Number 5076) one of the areas of authority of the Court is to review Laws against the 1945 Constitution;

[3.4] Whereas the petition *a quo* is concerned with the review of Law in this case of Law Number 32/2004 under the 1945 Constitution, and therefore, the Court has authority to hear the petition *a quo*;

Legal standing of the Petitioner

[3.5] Whereas pursuant to Article 51 paragraph (1) of Law of the Constitutional Court Law as well as its Elucidation, the parties which may act as Petitioners in the review of a Law under the 1945 Constitution shall be those who consider that their constitutional rights and/or authority have been impaired by the coming into effect of the Law petitioned for review, namely:

- a. individual Indonesian citizens (including, groups of people having a common interest);
- b. customary law community units insofar as they are still in existence and in accordance with the development of the communities and the principle of the Unitary State of the Republic of Indonesia as provided for in Law;

- c. public or private legal entities; or
- d. state institutions;

Thus, the Petitioner in judicial review of Law under 1945 Constitution must first explain and prove, as follows:

- a. His legal standing as a Petitioner as intended in Article 51 paragraph (1) of the Constitutional Court Law;
- b. there is an impairment of his constitutional rights and/or authority as provided by the 1945 Constitution, due to the coming into effect of the Law petitioned for review;

[3.6] Whereas concerning the impairment of constitutional rights and/or authority as intended in Article 51 paragraph (1) of the Constitutional Court Law, following its Decision Number 006/PUU-III/2005 dated May 31, 2005, Decision Number 11/PUU-V/2007 dated September 20, 2007 and subsequent decisions, the Court is of the opinion that the impairment of constitutional rights and/or authority as intended in Article 51 paragraph (1) of Law of the Court must meet 5 (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 the law petitioned for review;
- e. It is likely 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 no longer occur; ;

[3.7] Whereas the Petitioner argues that he is an individual Indonesian citizen, who works daily as a member of the Assistance Team of the General Elections Supervisory Board specifically dealing with the field of law and handling violations in regional head general elections, who considers that the phrase "as intended in Article 83" in Article 116 paragraph (4) of Law Number 32/2004 has impaired the constitutional rights of the Petitioner as provided for in Article 1 paragraph (3), Article 22E paragraph (1), Article 28G paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution, stating:

- Article 1 paragraph (3): "*The State of Indonesia shall be a constitutional rule of law state*";

- Article 22E paragraph (1): “*General elections shall be held in a direct, public, free, confidential, honest and fair manner once in every five years*”;
- Article 28G paragraph (1): “*Every person shall have the right to protect him/herself, his/her family, honor, dignity and property under his/her control, and shall have the right to feel secure and be protected from the threat of fear to do, or not to do something which constitutes human right*”;
- Article 28D paragraph (1): “*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*”;

for the principal reasons, as follows:

1. Whereas the application of Article 116 paragraph (4) of Law Number 32/2004, to the extent that the phrase “*as intended in Article 83*”, potentially creates legal uncertainty leading to confusion for the General Election Supervisory Committees throughout Indonesia in the process of following up violations of Regional Head General Elections conducted by state officials, structural officials and functional officials in public offices and village heads making decisions and/or taking actions to the benefit or disbenefit of any one of any one of the candidate pairs during the campaign period, which is expressly prohibited in Article 80 of Law Number 32/2004. The General Election Supervisory Committee cannot enforce rules of law caused due to incorrect reference in the regulation so

- that the existence of the norm has injured one of the principles of a rule of law state, namely principle of legal certainty of just laws as included in Article 1 paragraph (3) and Article 28D paragraph (1) of the 1945 Constitution;
2. Whereas Article 116 paragraph (4) of Law Number 32/2004 which refers to Article 83 has caused the article to become unenforceable due to the incorrect reference leading to legal uncertainty;
 3. Whereas the incorrect reference in Article 116 paragraph (4) of Law Number 32/2004 concerning Regional Government which has directly caused state officials, structural officials and functional officials to be legally immune when taking actions and/or making decisions to the benefit or disbenefit of any one of the candidate pairs, while such actions and decisions are expressly prohibited in Article 80 of Law Number 32/2004 concerning Regional Government. Consequently, Article 116 paragraph (4) of Law Number 32/2004 has given a special treatment before the law for state officials, structural officials and functional officials when they commit a criminal act of general election. This matter has led to the violation of equality before the law principle which has been expressly provided for in Article 28D paragraph (1) of the 1945 Constitution;
 4. Whereas Article 116 paragraph (4) of Law Number 32/2004 providing for criminal sanctions cannot be used to adjudicate state officials, structural officials and functional officials in public offices and village heads making

decisions and/taking actions to the benefit or disbenefit of any one of the candidate pairs has also injured Human Rights as intended in Article 28D paragraph (1) of the 1945 Constitution, namely that any person shall have right to the recognition, the guarantee, the protection and the legal certainty of just laws as well as equal treatment before the law. The community as the reporter or the general election supervisory committee who finds violations by state officials, structural officials and functional officials in public offices and village heads making decisions and/taking actions to the benefit or disbenefit of any one of the candidate pairs, may not have legal certainty because their report cannot be followed-up, and they cannot obtain justice, and therefore, the article has become unuseful to be applied;

5. Whereas the Constitutional Court in the Constitutional Court Decision Number 41/PHPU.D-VI/2008 stated a universally followed principle of law and justice stating that “no person may get the benefit from any deviation and violation he/she has personally committed and no person may be harmed by any deviation and violation committed by another person” (*nullus/nemo commodum capere potest de injuria sua propria*). Accordingly, none of the candidate pairs in general elections will gain benefit from violations of the constitution and the principle of justice in the implementation of general elections.

[3.8] Whereas pursuant to Article 51 paragraph (1) of the Constitutional Court Law, decisions of the Court concerning legal standing and in relation to the impairment to the Petition, according to the Court:

- The petitioner has constitutional rights provided by the 1945 Constitution, particularly Article 1 paragraph (3), Article 22E paragraph (1), Article 28G paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution and the petitioner considers that the constitutional rights have been impaired by the coming into effect of the Law petitioned for review;
- Constitutional impairment of the Petitioner is specific and actual or at least potential in nature which, pursuant to logical reasoning, can be assured of occurring;
- There is a causal relationship (*Causal verband*) between the intended impairment and the coming into effect of the Law petitioned for review and that it is likely that with the granting of petition, such constitutional impairment as argued will not or will no longer occur;

Based on the considerations, the Court is of the opinion that the Petitioner has legal standing to file the petition *a quo*;

[3.9] Whereas because the Court has authority to hear the petition *a quo* and the Petitioner has legal standing, then the Court will consider the substance of the petition;

Substance of the Petition

Opinion of the Court

[3.10] Considering, having thoroughly examined the petition of the Petitioner, the Government's statement, the statement of the Petitioner's expert as well as the written evidence presented by the Petitioner, as included in the Facts of the Case, the Court is of the opinion, as follows:

[3.10.1] Whereas Article 116 paragraph (4) of Law Number 32/2004 states "*Any state officials, structural officials and functional officials in public offices and village heads deliberately violating the provisions **as intended in Article 83** shall be subject to a minimum criminal sanction of imprisonment of 1 (one) month or a maximum criminal sanction of imprisonment of 6 (six) months and/or a minimum fine of Rp600,000.00 (six hundred thousand Rupiah) or a maximum fine of Rp6,000,000.00 (six million Rupiah)*". The phrase "**as intended in Article 83**" in Article 116 paragraph (4) of Law Number 32/2004 refers to the regulation on campaign funds for candidate pairs of Regional Head general election rather than on violations in Regional Head General Elections and other officials;

[3.10.2] Whereas Article 80 of Law Number 32/2004 stated, "Article 80 of Law Number 32 Year 2004 concerning Regional Government provides that: State officials, structural officials and functional officials in public offices and village heads shall be prohibited from making decisions and/or taking actions which benefit or disbenefit any one of the candidate pairs during the campaign period".

The Article *a quo* provides for the prohibition, including violations of Regional Head and Vice Head General Elections in Indonesia;

[3.10.3] Whereas the Petitioner has filed a petition for constitutionality review of the phrase “**as intended in Article 83**” in Article 116 paragraph (4) of Law Number 32/2004 being inconsistent with Article 1 paragraph (3), Article 22E paragraph (1), Article 28G paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution, for the reason that the phrase has an incorrect reference, as Article 83 of Law Number 32/2004 is not related to the prohibition for state officials, structural officials and functional officials in public offices and village heads from making decisions and/or taking actions to the benefit or disbenefit of any one of the candidate pairs during the campaign period, but rather, it regulates campaign funds. The article which regulates that state officials, structural officials and functional officials in public offices and village heads shall be prohibited from making decisions and/or taking actions to the benefit or disbenefit of any one of the candidate pairs during the campaign period is Article 80 of Law Number 32/2004. Therefore, in order to eliminate legal uncertainty contained in the norm due to incorrect reference to an article, the Court needs to give legal certainty in order to enforce justice by declaring that the phrase “**as intended in Article 83**” in Article 116 paragraph (4) of Law Number 32/2004 must be read “**as intended in Article 80**”;

[3.11] Whereas based on the foregoing considerations, according to the Court, the Petitioners’ petition has legal grounds;

4. CONCLUSION

Based on the assessment of the facts and laws as described above, the Court concludes that:

[4.1] The Court has authority to hear the petition of the Petitioner;

[4.2] The Petitioner has legal standing to file the petition *a quo*;

[4.3] The Petitioner' petition has legal grounds.

Based on the 1945 Constitution of the State of the Republic of Indonesia, Law Number 24 Year 2003 concerning the Constitutional Court as amended by Law Number 8 Year 2011 concerning the Amendment to Law Number 24 Year 2003 concerning the Constitutional Court (State Gazette of the Republic of Indonesia Year 2011 Number 70, Supplement to the State Gazette of the Republic of Indonesia Number 5226) as well as Law Number 48 Year 2009 concerning 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).

5. DECISIONS

Passing the decision

Declaring:

- To grant the Petitioner' petition in its entirety;

- The phrase “**as included in Article 83**” in Article 116 paragraph (4) of Law Number 32 Year 2004 concerning Regional Government (State Gazette of the Republic of Indonesia Year 2004 Number 125, Supplement to State Gazette of the Republic of Indonesia Number 4437) inconsistent with the 1945 Constitution to the extent that it is not interpreted to be “**as intended in Article 80**”;
- That the Phrase “**as included in Article 83**” in Article 116 paragraph (4) of Law Number 32 Year 2004 concerning Regional Government (State Gazette of the Republic of Indonesia Year 2004 Number 125, Supplement to State Gazette of the Republic of Indonesia Number 4437) shall have no binding legal effect to the extent that it is not interpreted to be “**as intended in Article 80**”;
- That Article 116 paragraph (4) of Law Number 32 Year 2004 concerning Regional Government must fully read, “*Any state officials, structural officials and functional officials in public office and village heads deliberately violating the provisions **as intended in Article 80** shall be subject to a minimum criminal sanction of imprisonment of 1 (one) month or a maximum criminal sanction of imprisonment of 6 (six) months and/or a minimum fine of Rp600,000.00 (six hundred thousand Rupiah) or a maximum fine of Rp6,000,000.00 (six million Rupiah)*”;

- To order the inclusion of this decision in the Official Gazette of the Republic of Indonesia properly.

Hence this decision was made in the Consultative Meeting of Justices attended by nine Constitutional Court Justices, namely Moh. Mahfud MD., as the Chairperson and concurrent Member, Achmad Sodiki, Anwar Usman, Maria Farida Indrati, Muhammad Alim, Ahmad Fadlil Sumadi, Hamdan Zoelva, Harjono and M. Akil Mochtar, respectively as Members, on **Thursday, April the nineteenth year two thousand and twelve** and was pronounced in the Plenary Session of the Constitutional Court open for the public on **Tuesday, May the first year two thousand and twelve**, by eight Constitutional Court Justices namely Moh. Mahfud MD., as the Chairperson and concurrent Member, Achmad Sodiki, Anwar Usman, Maria Farida Indrati, Ahmad Fadlil Sumadi, Hamdan Zoelva, Harjono, and M. Akil Mochtar, respectively as Members, assisted by Eddy Purwanto as Substitute Registrar, in the presence of the Petitioner, the Government or its representative the People's Legislative Assembly or its representative.

CHIEF JUSTICE,

Sgd.

Moh. Mahfud MD

JUSTICES,

Sgd.

Achmad Sodiki

Sgd.

Anwar Usman

Sgd.

Maria Farida Indrati

Sgd.

Ahmad Fadlil Sumadi

Sgd.

Hamdan Zoelva

Sgd.

Harjono

Sgd.

M. Akil Mochtar

SUBSTITUTE REGISTRAR

Sgd.

Eddy Purwanto