



## DECISION

Number 98/PUU-VII/2009

FOR THE SAKE OF JUSTICE UNDER THE ONE ALMIGHTY GOD

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA,

[1.1] Examining, hearing and deciding upon constitutional cases at the first and final levels, has passed a decision in the case of petition for Judicial Review of Law Number 42 Year 2008 regarding the General Elections of the President and Vice President under the 1945 Constitution of the State of the Republic of Indonesia, filed by:

- [1.2] 1. Name : **Denny Yanuar Ali, Ph.D.**  
Occupation : General Chairperson of the Indonesian Association for Public Opinion Research and Executive Director of PT Lingkar Survei Indonesia;  
Address : Jalan Pemuda Number 70, Rawamangun, East Jakarta;
2. Name : **Drs. Umar S. Bakry, M.A.**  
Occupation : Secretary General of the Indonesian Association for Public Opinion Research

and Director of the National Survey Institute  
Foundation;

Address : Pulomas Satu Office Building, Jalan  
Jenderal A. Yani Number 2, East Jakarta;

In this matter granting power of attorney to **Dr. A. Muhammad Asrun, S.H., M.H.**, advocate of the “Muhammad Asrun and Partners (MAP) Law Firm”, having its address at PGRI Building, at Jalan Tanah Abang III Number 24, Central Jakarta by virtue of a Power of Attorney dated February 9, 2009, to act either individually or jointly for and on behalf of the authorizer;

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

- [1.3] Having read the petition of the Petitioners;
- Having heard the statements of the Petitioners;
- Having examined the evidence;

### 3. LEGAL CONSIDERATIONS

[3.1] Whereas the purpose and objective of the *a quo* petition are to conduct Judicial Review of Article 188 paragraph (2), paragraph (3), and paragraph (5) as well as Article 228 and Article 255 of Law Number 42 Year 2008 regarding the General Elections of the President and Vice President (State Gazette of the Republic of Indonesia Year 2008 Number 176, Supplement to the State Gazette of the Republic of Indonesia Number 4924) (hereinafter referred to

as Law Number 42/2008) under the 1945 Constitution of the State 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) shall first consider the authority of the Court to examine, hear, and decide upon the *a quo* petition and the legal standing of the Petitioners;

### **Authority of the Court**

**[3.3]** Whereas according to Article 24C paragraph (1) of the 1945 Constitution and Article 10 paragraph (1) sub-paragraph a of Law Number 24 Year 2003 regarding the Constitutional Court (hereinafter referred to as the Constitutional Court Law) *juncto* Article 12 paragraph (1) sub-paragraph a of Law Number 4 Year 2004 regarding Judicial Authority, the Court has authority to hear cases and conduct at the first and final levels, the result of which shall be final in nature, the judicial review of laws under the 1945 Constitution;

**[3.4]** Whereas the Petitioners' petition is intended to review the constitutionality of the norms in Article 188 paragraph (2), paragraph (3), and paragraph (5), as well as Article 228 of Law Number 42/2008 under the 1945 Constitution, and therefore the Court has authority to examine, hear, and decide upon the *a quo* petition;

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

**[3.5]** Whereas based on Article 51 paragraph (1) of the Constitutional Court Law, the parties that can file a petition for Judicial Review of a Law under the 1945 Constitution shall be those considering that their constitutional rights and/or authority granted by the 1945 Constitution are impaired by the coming into effect of a Law, namely:

- a. individual Indonesian citizens (including groups of people having a common interest);
- b. customary law community groups insofar as they are still in existence and in line with the development of the communities and the principle of the Unitary State of the Republic of Indonesia as regulated in law;
- c. public or private legal entities; or
- d. state institutions;

Hence, in the judicial review of a law under the 1945 Constitution, the Petitioners must explain and substantiate the following:

- a. their qualification as petitioners as intended in Article 51 paragraph (1) of the Constitutional Court Law;
- b. whether or not there is any impairment of constitutional right and/or authority granted by the 1945 Constitution as a result of the coming into effect of the law being petitioned for review;

**[3.6]** Considering also that since the Court's Decision Number 006/PUU-III/2005 dated May 31, 2005 and Decision Number 11/PUU-V/2007 dated September 20, 2007, the 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 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. the possibility that with the granting of the Petitioners' petition, the impairment of such constitutional rights and/or authority asserted by the Petitioners will not or will no longer occur;

**[3.7]** Whereas the Petitioners argue that their constitutional rights granted by the 1945 Constitution have been specifically and actually impaired by the coming into effect of the provisions of Article 188 paragraph (2), paragraph

(3), and paragraph (5), as well as Article 228 and Article 255 of Law Number 42/2008.

- **Article 188 paragraph (2) states that:** *“The results of a survey or poll shall not be announced and/or disseminated during the cooling off period”.*
- **Article 188 paragraph (3) states that:** *“The results of a quick count may be announced and/or disseminated not earlier than on the day following the day/date of voting.”*
- **Article 188 paragraph (5) states that:** *“A violation of the provisions of paragraph (2), paragraph (3), and paragraph (4) constitutes a criminal act in the General Elections of the President and Vice President.”*
- **Article 228 states that:** *“Every person announcing and/or disseminating the results of a survey or poll during the cooling off period which may influence or which is aimed at influencing the Voters, shall be punished with a minimum imprisonment of 3 (three) months and a maximum imprisonment of 12 (twelve) months and a minimum fine of Rp.3,000,000.00 (three million rupiah) and a maximum fine of Rp.12,000,000.00 (twelve million rupiah)”.*
- **Article 255 states that:** *“Every person or institution announcing the results of a quick count on the day/date of voting shall be punished with a minimum imprisonment of 6 (six) months and a maximum imprisonment of 18 (eighteen) months and a minimum fine of Rp.6,000,000.00 (six million rupiah) and a maximum fine of Rp.18,000,000.00 (eighteen million rupiah)”.*

**[3.8]** Whereas with respect to the aforementioned articles, the Petitioners present the following arguments:

**[3.8.1]** An opinion survey is intended not only for researching into the popularity of the candidates of President and Vice President competing in the General Elections, but also for researching into the knowledge of the constituents of the procedures of the General Elections, track records, and the people's understanding of the programs offered by the pairs of Candidates of President and Vice President, which is useful for improving the quality of the General Elections. The prohibition of all kinds of survey on the cooling off day also violates the freedom of the citizens to conduct research and to convey the results of their research as guaranteed by the 1945 Constitution namely **Article 28F** to the effect that every person shall have the right to process and impart information by using all available kinds of channels. The prohibition of the publication of all kinds of survey on the cooling off day also violates the freedom of the citizens to express their opinions on the preparedness of the constituents in facing the general elections, as guaranteed in Article 28E paragraph (3) of the 1945 Constitution on the freedom to express opinions;

**[3.8.2]** The quick calculation or quick count, as is the standard term, is indeed intended to identify the results of general elections in a quick manner by using a sampling method. Because of this quick manner, this method is called quick count, which is usually announced between two and five hours after the last Voting Station (TPS) is closed. It would not be called a quick count if it were

prohibited from being announced quickly on the general election day and if it were only allowed to be announced on the following day. The prohibition of the publication of a quick count on the general election day is clearly uncivilized and is contrary to the advancement of science at a time when science has been able to lead to quick conclusions through statistics. The development of science should be appreciated instead of being restricted; In addition, it has never been claimed that a quick count was the official result of the general elections. The Indonesian public especially those abroad know that a quick count is a scientific projection. The official decision on the general elections still rests with the General Elections Commission; The prohibition of a quick count on the general election day is extremely uncommon in democratic countries. The following evidence shows how in the United States, the world came to know that Barack Obama was elected as president only 3 hours after the Voting Stations closed, on the very day of the general election [Exhibit P-7]. The Press Association in the United States had projected the victory of Barack Obama on the general election day. In the United States, this is common. The prohibition of a quick count on the general elections day also contradicts Indonesia's own long-embedded tradition. The following evidence shows that in the afternoon of the day of General Elections of Members of the People's Legislative Assembly (DPR), the Regional Representative Council (DPD), and the Regional People's Legislative Assembly (DPRD) Year 2009, TVOne channel had publicized the quick count results in the form of the vote acquisition of the Democratic Party over the vote acquisition of the Indonesian Democratic Party of Struggle (PDIP) and the Functionaries Group



(*Golkar*) Party [Exhibit P-8]; The prohibition of a quick count on the general elections day also contradicts the traditions of tens of regional head elections. The following evidence shows the MURI record won by the Indonesian Survey Institute (LSI) as it has 64 times announced the quick count on the day of the regional head elections, and the winners it has claimed have never been different from the results according to the Regional General Elections Commission (KPUD) [Exhibit P-9]; The prohibition of a quick count publication also violates the freedom of the citizens to conduct research and to convey the results of their research, as guaranteed by Article 28F of the 1945 Constitution, to the effect that every person shall have the right to process and impart information using all available kinds of channels; The prohibition of quick count results on the general elections day also violates the freedom of the citizens to express their opinions on the general election results based on scientific research, as guaranteed by Article 28E paragraph (3) of the 1945 Constitution on the freedom to express opinions;

**[3.8.3]** Surveys and polls are expressions of academic freedom, which has been subject to other Indonesian positive laws, both civil and criminal. It is not necessary to have additional regulations regulating such academic activities, especially considering that surveys and polls constitute a part of the academic freedoms guaranteed by Article 28E and Article 28F of the 1945 Constitution; The criminalisation of the act of survey publication on the cooling off day and quick count publication on the general elections day is the criminalization of the constitutional right of citizens, which is inconsistent with Article 28D paragraph

(1) of the 1945 Constitution, because it does not provide legal certainty, does not provide a sense of security and protection from a threatened fear to exercise the human right of academic freedom, which is inconsistent with Article 28G paragraph (1) of the 1945 Constitution;

**[3.9]** Whereas based on the foregoing description, the Court is of the opinion that both as individual Indonesian citizens and as private legal entities, the Petitioners have been able to prove the impairment of their constitutional rights due to the coming into effect of the articles petitioned for review, so that in the *a quo* petition, the Petitioners have, *prima facie*, fulfilled the legal standing requirements;

**[3.10]** Whereas since the Court has authority to examine, hear, and decide upon the *a quo* petition and the Petitioners have legal standing to act as the Petitioners, the Court shall further consider the Substance of the Petition;

### **Substance of the Petition**

The provisions petitioned for review are Article 188 paragraph (2), paragraph (3) and paragraph (5), as well as Article 228 and Article 255 of Law Number 42/2008 under the 1945 Constitution (Exhibit P-2), with the following arguments:

1. The Petitioners petition for constitutional review of Article 188 paragraph (2) regarding the prohibition of the publication of survey or poll results during the cooling off period because:

- a. An opinion survey is intended not only for researching the popularity of the candidates of President and Vice President competing in the General Elections, but also for researching the knowledge of the constituents of the procedures of general elections, track records, and the people's understanding of the programs offered by the pairs of candidates of President and Vice President, which is useful for improving the quality of the general elections.
  - b. The prohibition of the publication of all kinds of survey on the cooling off day also violates the freedom of the citizens to conduct research and to convey the results of their research, as guaranteed by the 1945 Constitution, namely **Article 28F** to the effect that every person shall have the right to process and impart information using all available kinds of channels;
  - c. The prohibition of the publication of all kinds of survey on the cooling off day also violates the freedom of the citizens to express their opinions on the preparedness of the constituents in facing the general elections, as guaranteed by Article 28E paragraph (3) of the 1945 Constitution on the freedom to express opinions.
2. The Petitioners petition for constitutional review of Article 188 paragraph (3) on the prohibition of quick count publication on the general Election day because:

- a. The quick calculation or quick count, as is the standard term, is indeed intended to identify the results of general elections in a quick manner by using a sampling method. Because of this quick manner, this method is called a quick count, which is usually announced within two to five hours after the last Voting Station (TPS) has closed. It would not be called a quick count if it were prohibited from being announced quickly on the general election day and were only allowed to be announced on the following day.
- b. The prohibition of the publication of a quick count on the general elections day is clearly uncivilized and is contrary to the advance of science at the time when science has been able to lead to quick conclusions through statistics. The development of science should be appreciated instead of being restricted.
- c. In addition, it has never been claimed that a quick count was the official result of general elections. The Indonesian public, especially those abroad, know that a quick count is a scientific projection. The official decision on the general elections still rests with the General Election Commission (KPU).
- d. The prohibition of quick counts on the general elections day is extremely uncommon in democratic countries. **Exhibit P-7** shows how in the United States, the world came to know that Barack

Obama was elected as president only 3 hours after the Voting Stations were closed, on the very day of the general election. The Press Association in the United States had projected the victory of Barack Obama on the general elections day. In the United States, this is common.

- e. The prohibition of quick counts on the general elections day also contradicts Indonesia's own long-embedded tradition. **Exhibit P-8** shows that in the afternoon of the day of General Elections of Members of the People's Legislative Assembly (DPR), the Regional Representative Council (DPD), and the Regional People's Legislative Assembly (DPRD) Year 2009, TVOne channel had publicized the quick count results in the form of the vote acquisition of the Democratic Party over the vote acquisition of the Indonesian Democratic Party of Struggle (PDIP) and the Functionaries Group (Golkar) Party.
- f. The prohibition of quick counts on the general elections day also contradicts the traditions of tens of regional head elections. **Exhibit P-9** shows the MURI record won by the Indonesian Survey Institute (LSI) as it has 64 times announced the quick count on the day of the regional head elections, and the winners it has claimed have never been different from the results according to the Regional General Election Commission (KPUD).



- a. Survey and poll activities are expressions of academic freedom which have been subject to other Indonesian positive private or criminal laws. There is no need for additional regulations for regulating such academic activities, especially considering that survey and poll activities are part of the academic freedoms guaranteed by Article 28E and Article 28F of the 1945 Constitution.
- b. The criminal act of survey publication on the cooling off day and quick count publication on the general elections day is the criminalization of the constitutional right of citizens which is inconsistent with Article 28D paragraph (1) of the 1945 Constitution, because it does not provide legal certainty, does not provide a sense of security and protection from a threatened fear to exercise the human right of academic freedom, which is inconsistent with Article 28G paragraph (1) of the 1945 Constitution.

### **Opinion of the Court**

**[3.14]** Whereas in relation to the *objectum litis* of the *a quo* petition of the Petitioners, the Court has stated its opinion in the case of judicial review of Law Number 10 Year 2008 regarding the General Elections of Members of the People's Legislative Assembly (DPR), the Regional Representative Council (DPD), and the Regional People's Legislative Assembly (DPRD) with Decision Number 9/PUU-VII/2009 dated March 30, 2009, namely in the legal

considerations of that Court Decision which, among other things, states as follows:

1. *"Whereas a poll or survey as well as a quick count of the voting results using a scientific method is a form of education, supervision and checks and balances in the process of state administration including the general elections. The expected contributions will be provided in this way only if the results as a form of information can be disseminated to and obtained by the community as well as state administrators, so that the decisions made, both by the constituents and by the state administrators, as well as the general elections, will be enlightened by the existing facts in the community, and cannot be manipulated for the interests of certain parties;*
2. *Whereas the Court is not of the same view as the creators of the Law, as represented by the Government and the People's Legislative Assembly (DPR), namely that the results of a survey and quick count can create unrest and influence the community during the cooling off period in facing the upcoming General Elections or prior to the elapse of one day following the voting because according to the Court, this view of the legislators is not factual at all and is outdated at least for two reasons. First, insofar as it is conducted based on the methodological-scientific principle and not having the tendency to influence the constituents during the cooling off period, the publication of survey results cannot be prohibited. However, in the event the aforementioned publication of survey results tends to favor*



*or disfavor any contestant participating in the General Elections, then Article 89 of and the sanctions provided for in the a quo Law may be applied to the surveyor or the organizing institution. Second, according to the Court, insofar as it is concerned with quick count results, there is no accurate data to indicate that the aforementioned publication of quick count results has disturbed public order or created anxiety in the community. None of a number of quick counts conducted so far has created anxiety or disturbed public order, because as a matter of fact, from the beginning, the results of such quick counts have not been able to be treated as official results. Even if there were such an effect, the facts are very limited in number and even so, it would be due to the fact that the quick count organizers have conducted the quick count in an irresponsible manner and with a certain bias. Based on the a quo Law or other laws and regulations, quick count organizers may still have sanctions imposed. It must be remembered that from the beginning, it has become public knowledge (notoir feiten) that quick count results are not to be treated as the official results, but that the people have the right to know. In fact, many community members wait for the quick count results upon the completion of the voting with full awareness that the official and valid results would be announced later by the General Election Commission (KPU) according to the official schedule as stipulated. Therefore, both the publication of survey results during the cooling off period shortly before the General Elections and the publication of quick count results upon the completion of*

*the voting are in accordance with the constitutional rights and even in line with the provisions of Article 28F of the 1945 Constitution;*

3. *Whereas even if the prohibition of the publication of survey results during the cooling off period was intended to achieve or protect the interest or benefits of public order, which is a public interest, or to provide justice for the participants in the General Elections who did not wish for the polls to reflect their real status in the eyes of the constituents before the voting, as well as security and peace, far from the conflicts among the General Election participants and their supporters, the protection of all the aforementioned legal goals and interests can be achieved by law enforcement or through the relevant legal sector. Even if some of the General Election participants did not wish for their image to be announced before the voting, this wish must be set aside in the interests of the community members who want quicker information regarding various issues in relation to the General Elections in a quicker manner based on a survey;*
  
4. *Whereas if the right to announce survey or poll results during the cooling off period and to announce quick count results before the elapse of one day following the voting is restricted in accordance with fair demands based on the considerations of morality, religious values, and public order in a democratic society, then in a rational and proportional manner, such a restriction is already provided for in accordance with Article 28J paragraph*

*(2) of the 1945 Constitution accurately and not in a careless manner. Such a restriction is made not through the formulation of formal offense, namely by prohibiting the act, but the target of the prohibition is the consequence (substantive offense), which may arise from the act being regulated, as explained by the expert presented by the Petitioners. In this way, poll and quick count organizers can give their own considerations and assessments on the consequences which may arise from the announcements they conduct, including to make their own calculation of the risks under the criminal law which must be considered as a consequence of their act. Therefore, the criminal law can actually be used in a proportionate and rational manner and shall only be used as the ultimate remedy (ultimum remedium), so that the criminal law will not lose its authority due to inaccurate and careless application and will not lead to excessive criminalization;*

5. *Whereas the community's right to know constitutes a part of Human Rights, namely the freedom to obtain information and also, a contrario, the freedom to give or convey information (freedom of information). Article 28F of the 1945 Constitution expressly states that 'Every person shall have the right to communicate and to obtain information to develop him/herself and his/her social environment, and shall have the right to seek, obtain, possess, store, process and impart information by using all available kinds of channels';*

6. *Whereas the principle of proportionality constitutes the principle and morality of the constitution which at all times must be presented as the standard to justify the setting aside of human rights which have become constitutional rights, namely the Government's obligation and responsibility to protect, to promote, to enforce and to fulfill, as also stipulated in Article 28I paragraph (4) of the 1945 Constitution. Because of the existence of such a constitutional obligation and responsibility of the State and the Government in Article 28I paragraph (4), to be considered valid, Article 28J paragraph (2) as the reason for setting aside the human rights which become the constitutional rights, must be applied in a careful, accurate and meticulous manner, as well as by establishing operational standards of how to apply the provision which mentions 'the restrictions stipulated in laws and regulations with the sole purpose to guarantee the recognition of and the respect for other persons' rights and freedom and fulfill fair demands in accordance with the considerations of morality, religious values, security, and public order in a democratic society';*
  
7. *Polls and surveys are a science as well as an art. The preparation of samples and questionnaires, provision of survey equipment, as well as analysis of the results constitute a science of researching public opinion based on the methods and techniques which are established and valid, whereas the art lies in the preparation of the questions and the choice of words used in the questions (Arterton F. Christopher, Kegunaan Jajak Pendapat Umum dalam Kampanye (The Use of Public Opinion Poll in*

*Campaigns), 1996). A survey can be conducted by an independent institution which is not tied to one of the political contestants participating in the General Elections, but it may also be a part of or conducted at the request of one of the participants in the General Elections. Therefore, in the United States for instance, surveys are a part of General Election campaigns (Merloe, 1999, and Arterton, 1996). In Indonesia, as may be understood from the provisions in Law Number 10/2008, a survey is not a part of the Campaigns (Chapter VIII), but is included in Chapter XIX on the Community's Participation in the Implementation of the General Elections, so that a survey institution is required to be independent. Regardless of whether surveys and survey institutions constitute a part of campaign strategies of the participants in the General Elections or are independent, as a scientific activity, surveys and survey institutions must keep to the scientific principles applicable in the survey, which the public can be aware of. Although surveys and survey institutions are independent and do not constitute a part of the campaign strategies of one of the participants in the General Elections, survey institutions must also comply with the provisions on the cooling off period in General Election campaigns.”*

**[3.15]** Whereas the foregoing considerations in Decision Number 9/PUU-VII/2009 dated March 30, 2009, *mutatis mutandis*, apply to the Substance of the *a quo* Petition, and therefore, the Court is of the following opinion:

1. Whereas with respect to Article 188 paragraph (2) of Law Number 42/2008 which reads *“The results of a survey or poll shall not be announced and/or disseminated during the cooling off period”*, the Court considers that the basic rights regulated in Article 28F of the 1945 Constitution cannot be set aside by the *a quo* provisions, *and* therefore, the Petitioners’ argument is based upon sufficient grounds. This means that the announcement of the survey results is not unconstitutional insofar as it is not related to the track records or other forms which may favor or disfavor any participant in the General Elections as regulated in Article 47 paragraph (5) of Law Number 42/2008;
  
2. Whereas with respect to the Petitioners’ argument regarding Article 188 paragraph (3) of Law Number 42/2008 which reads, *“The results of a quick count may be announced and/or disseminated not earlier than on the day following the day/date of voting”*, the Court agrees with the Petitioners’ argument that the *a quo* provision is not in accordance with the nature of a quick count and hinders a person’s desire as well as right to know, so that it is inconsistent with Article 28F of the 1945 Constitution. In addition, quick count results will not affect the freedom of the voters to make their choice because the voting has been completed and it is impossible to conduct a quick count before the voting has been completed;

3. Whereas with respect to Article 188 paragraph (5) of Law Number 42/2008 which reads *“A violation of the provisions of paragraph (2), paragraph (3), and paragraph (4) constitutes a criminal act in the General Elections of the President and Vice President”*, the Court is of the opinion that it is no longer relevant to the provisions of paragraph (2) and paragraph (3) because the Court considers that the Petitioners’ argument with respect to paragraph (2) and paragraph (3) is based upon sufficient grounds. Therefore, the provisions of paragraph (5) of Law Number 42/2008 are only relevant to Article 188 paragraph (4) of Law Number 42/2008 which, *nota bene*, is not petitioned for review or which the Petitioners consider constitutional;
4. Whereas with respect to the provisions of Article 228 of Law Number 42/2008 which reads *“Every person announcing and/or disseminating the results of a survey or poll during the cooling off period which may influence or which is aimed at influencing the Voters, shall be punished with a minimum imprisonment of 3 (three) months and a maximum imprisonment of 12 (twelve) months and a minimum fine of Rp.3,000,000.00 (three million rupiah) and a maximum fine of Rp.12,000,000.00 (twelve million rupiah)”*, the Court is of the opinion that because the Petitioners’ argument with respect to Article 188 paragraph (2) of Law Number 42/2008 has been declared to be based upon sufficient grounds, the criminal sanctions set forth in Article 228 of Law Number 42/2008 are no longer relevant and must be declared unconstitutional;

5. Whereas with respect to the provisions of Article 255 of Law Number 42/2008 which reads *“Every person or institution announcing the results of a quick count on the day/date voting shall be punished with a minimum imprisonment of 6 (six) months and a maximum imprisonment of 18 (eighteen) months and a minimum fine of Rp.6,000,000.00 (six million rupiah) and a maximum fine of Rp.18,000,000.00 (eighteen million rupiah)”*.
6. considering whereas the *a quo* article provides for criminal sanctions in respect of Article 188 paragraph (3) of Law Number 42/2008 and the Court has declared that the Petitioners’ argument on 188 paragraph (3) is based upon sufficient grounds, then the existence of Article 188 paragraph (2), paragraph (3) and paragraph (5) as well as Article 228 and Article 255 of Law Number 42/2008 is no longer relevant, and it must also be declared unconstitutional.

**[3.16]** Whereas surveys and quick counts, the dissemination of which is guaranteed by the 1945 Constitution, shall be surveys and quick counts based on science and not based on the desire or motive to influence the constituents, therefore, the neutrality of surveys and quick counts is vitally important. This does not mean that survey and quick count may not be conducted for the interests of the candidate pairs of President and Vice President. If this happens, then the public shall have the right to know that such activity has been conducted at the request of and financed by a certain candidate pair of President/Vice



President and also the survey and quick count organizer shall be obliged to disclose it to the public in an honest and transparent manner.

#### **4. CONCLUSION**

Based on the foregoing considerations of the facts and laws, the Court has come to the following conclusion:

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

**[4.2]** The Petitioners have legal standing;

**[4.3]** In the Substance of the petition, the Petitioners' arguments for the review of Article 188 paragraph (2) and paragraph (3), as well as Article 228 and Article 255 of Law Number 42/2008 are based upon sufficient grounds, whereas the Petitioners' argument for the review of Article 188 paragraph (5) is based upon sufficient grounds to the extent it is related to Article 188 paragraph (2) and paragraph (3) of Law Number 42/2008.

#### **5. DECISIONS**

Based on the 1945 Constitution of the State of the Republic of Indonesia and in view of Article 56 paragraph (2), paragraph (3), and paragraph (5), as well as Article 57 paragraph (1) and paragraph (3) of Law Number 24 Year 2003 regarding the Constitutional Court (State Gazette of the Republic of

Indonesia Year 2003 Number 98, Supplement to the State Gazette of the Republic of Indonesia Number 4316).

**Decides,**

- To grant the Petitioners' petition partly;
- To declare that Article 188 paragraph (2) and paragraph (3), as well as Article 228 and Article 255 of Law Number 42 Year 2008 regarding the General Elections of the President and Vice President (State Gazette of the Republic of Indonesia Year 2008 Number 176, Supplement to the State Gazette of the Republic of Indonesia Number 4924) are inconsistent with the 1945 Constitution of the State of the Republic of Indonesia;
- To declare that Article 188 paragraph (5) of Law Number 42 Year 2008 regarding the General Elections of the President and Vice President (State Gazette of the Republic of Indonesia Year 2008 Number 176, Supplement to the State Gazette of the Republic of Indonesia Number 4924), to the extent it is concerned with the phrase "*paragraph (2), paragraph (3), and*" is inconsistent with the 1945 Constitution of the State of the Republic of Indonesia;
- To declare that Article 188 paragraph (2) and paragraph (3), as well as Article 228 and Article 255 of Law Number 42 Year 2008 regarding the General Elections of the President and Vice President (State Gazette of the Republic of Indonesia Year 2008 Number 176, Supplement to the

State Gazette of the Republic of Indonesia Number 4924), do not have any binding legal effect;

- To declare that Article 188 paragraph (5) of Law Number 42 Year 2008 regarding the General Elections of the President and Vice President (State Gazette of the Republic of Indonesia Year 2008 Number 176, Supplement to the State Gazette of the Republic of Indonesia Number 4924) to the extent it is concerned with the phrase “*paragraph (2), paragraph (3), and*” does not have any binding legal effect;
- To reject the remaining parts of the Petitioners’ petition;
- To order for this Decision to be properly promulgated in the Official Gazette of the Republic of Indonesia.

Hence this decision was made in the Consultative Meeting attended by nine Constitutional Court Justices on Thursday, July the second year two thousand and nine, and was pronounced in the Plenary Session of the Constitutional Court open for the public on this day, Friday, July the third year two thousand and nine by nine Constitutional Court Justices, namely Moh. Mahfud MD., as the Chairperson and concurrent Member, Abdul Mukthie Fadjar, M. Arsyad Sanusi, Harjono, Achmad Sodiki, Maria Farida Indrati, Maruarar Siahaan, M. Akil Mochtar, and Muhammad Alim, assisted by Fadzlun Budi SN. as the Substitute Registrar, in the presence of the Petitioners/their Attorneys, the

Government or its representative, and the People's Legislative Assembly or its representative.

**CHIEF JUSTICE,**

**Sgd.**

**Moh. Mahfud MD.**

**JUSTICES,**

**Sgd.**

**Abdul Mukthie Fadjar**

**Sgd.**

**Harjono**

**Sgd.**

**Maria Farida Indrati**

**Sgd.**

**Maruarar Siahaan**

**Sgd.**

**M. Arsyad Sanusi**

**Sgd.**

**Achmad Sodiki**

**Sgd.**

**M. Akil Mochtar**

**Sgd.**

**Muhammad Alim**

## **6. DISSENTING OPINION**

With respect to the foregoing decision of the Court, 3 Constitutional Court Justices namely **Achmad Sodiki**, **M. Akil Mochtar**, and **M. Arsyad Sanusi** have dissenting opinions, as follows:

**[6.1] Constitutional Court Justices Achmad Sodiki and M. Akil Mochtar**

**I. SUBSTANCE OF THE CASE**

The Petitioners consider that Article 188 paragraph (2), paragraph (3), and paragraph (5), as well as Article 228 and Article 255 of Law Number 42 Year 2008 regarding the General Elections of the President and Vice President are inconsistent with Article 28E and Article 28F of the 1945 Constitution of the State of the Republic of Indonesia.

**II. DISCUSSION**

1. *Cogito ergo sum!* “I think, therefore I am”, stated by Descartes shows that it is vitally important for humans to develop their thoughts because doing so will benefit the community, so that a person’s presence or existence in the community will appear, as he/she is not like other, inanimate objects. Thanks to the development of communication technology, any news through the cyberspace can be easily accessed by everyone.
2. There are three important issues regarding the freedom to express opinions, *“The first view is that freedom of expression is essential to a person’s autonomy and self-fulfillment. The second is the marketplace of ideas, that minimal government regulation will allow robust debate between citizens that is most likely to lead to the truth. The third*

*justification is that freedom of expression is a necessary component of democratic government*" (Jacob Rowbottom, "Media Freedom and Political

Debate in the Digital Era", *Media Law Review*, Vol. 69 July No. 4, 2006).

Global capitalism offers news as a consumptive object, using the advertisements through the press and the electronic media as an attractive source of income. Many present legislators buy these commodities for the purpose of acquiring votes in the General Elections.

3. News in its every form has become a commodity in the free market, meaning that any capable person can buy and obtain the benefits from news reporting. Surveys made for purely scientific purposes, as in Universities, have now turned into a survey industry, serving the interests of individuals or groups and have entered the public domain. The balance between the protection of the interests of individuals and the public interest is needed in the democratic process. News has a great impact on the creation of benefits for individual interests in the political sector. It may happen that with the press' image-making, a legislator candidate or presidential candidate who was once unknown can become a person really needed by the community. Therefore, in the free market of the press, what Descartes said, "*Cogito ergo sum*", "*I think, therefore I am*", has currently shifted to 'I am able to buy news, therefore I am'. News is image. A person can be depicted in the image of a person who is successful in striking down corruptors and defending the poor, who is honest and trustworthy as well as close to the people. On the contrary, the

more a person or a party is incapable to buy an image, the less he/she would be taken into account, just like the Arabian saying, "*wujuduhu kaadamihi*" meaning that their existence seems to be non-existent, and it would be enough for parties with small funds to conduct campaigns just like paying homage at the cemetery, in other words, rarely visited, and only then if reported in the news by the mercy of the press giving the report. These small parties which have no funds become *the least advantaged* parties by the free market of the press. The danger is that "*The mass media, with the high costs of access and control in the hands of an elite, requires some oversight to prevent its important social and democratic functions being skewed in the interests of a small number of speakers or gatekeepers (Jacob Rowbottom: ibid)*". The presentation of image in the mass media has frequently exceeded what constitutes "the fact", and even when there is no such fact at all. Packages of information have created mass groups who are powerless and closed to factual information, thus becoming disguised slaves of modern industrial civilization, because this industry is not free from the manipulation of needs created by the capital-owner elite.

4. Based on such thoughts, it is not impossible that some surveys are financed by the parties having a great amount of funds, either before the upcoming General Elections or during the cooling off period, with the results being misleading to the community. However, it must be admitted that the press in Indonesia has not fully applied the quality of professional

and responsible reporting. Leaving the press to continue without controls and accountability will potentially make it the media of agitation and public deception which affect the psychology of the uneducated public, which, *nota bene*, are greater in number compared to the educated public. The news in the *Newsweek* regarding the abuse of the Koran in Guantanamo turned out to be a mistake of the resource persons and *Newsweek* apologized for the mistake and promised to be more careful in its reporting. Law Number 40 Year 1999 regarding the Press has not accommodated the issue. The aforementioned Law provides for criminal sanctions in the form of fine if the press violates the norms of morals and the principle of presumption of innocence as well as the issues of advertisements prohibited by the Law (*vide* Article 18 paragraph (2) of the Press Law). The remaining parts of the Press Law only regulate the right to respond and the right to correct the reporting considered to be problematic. It is this issue that is actually considered to bear no balance in the press. In addition, the Press Law is not strict in regulating who in the press company must be responsible for the news issued, whether the editorial head or the journalist (Frans Hendra Winarta: *Kebebasan Pers dalam Perspektif Pidana Ditinjau dari RUU KUHP [The Freedom of the Press from the Criminal Perspective Viewed based on the Draft Law on the Criminal Code]*).

5. The freedom of the press is an absolute element in a democratic country. Restrictions are necessary in order to prevent the abuse of the press and



for the protection of the weak. During the 2004 General Elections, survey results announced on the internet were easily infiltrated by the *hackerbarry (hacker)* causing the names of the banana party, the papaya party, and so forth, to appear, which in any case would confuse the people. Such restrictions are sufficiently provided with the imposition of a fine, not necessarily with criminal sanctions. Such limitations are not aimed at restricting the freedom of the press but to make the protagonists in the press more responsible, professional, and to respect other people's human rights.

### III. CONCLUSION

- a. Article 188 paragraph (2) of Law Number 42/2008 reads "*The results of a survey or poll shall not be announced during the cooling off period*". This applies to all the people including the participants in the General Elections or the parties. In Article 47 paragraph (5) of Law Number 42/2008, the print media and broadcasting institutions as referred to in paragraph (1) are "prohibited" from broadcasting news of advertisements, track records of the participants in the General Elections, or other forms which 'lead' to campaign interests which favor or disfavor the participants in the General Elections during the cooling off period. The survey itself may be conducted outside of the cooling off period before the General Elections, but its announcement is prohibited if it bears the

purposes referred to in Article 47 paragraph (5) of Law Number 42/2008. This means that during the cooling off period, the provisions of Article 188 paragraph (2) of Law Number 42/2008 are applicable to anyone which, despite the fact of being a limitation, it is conducted in a just manner in a sense that it is applied to all the people so that it is not discriminatory. During the cooling off period, all paraphernalia and signs of the parties in the general elections are removed. Every person must submit to the restrictions stipulated in laws and regulations with the sole purpose to guarantee the recognition of and the respect for other persons' rights and freedom and fulfill fair demands in accordance with the considerations of morality, religious values, security, and public order in a democratic society. Therefore, the petition with respect to this Article should be rejected.

- b. Article 188 paragraph (3) of Law Number 42/2008 reads "*The results of a quick count may be announced and/or disseminated not earlier than on the day following the day/date of voting.*" This Article is not needed because the relevant General Elections are over, so that the announcement of the quick count does not affect the results of the general elections. The Petitioners have been able to prove that private TV Stations have broadcast the quick count during the 2004 general elections and various results of quick

counts in the General Elections of General Heads, so the petition should be granted.

- c. Article 188 paragraph (5) of Law Number 42/2008, namely the provisions of paragraph (2) and paragraph (3) constitute criminal acts in the General Elections, and therefore, the petition should be granted to the extent it is concerned with the phrase "*paragraph (2), paragraph (3), and*".
- d. The petition with respect to Article 228 of Law Number 42/2008 should be rejected to the extent it is concerned with the words, "*Every person announcing and/or disseminating the results of a survey or poll during the cooling off period which may influence or which is aimed at influencing the Voters, shall be punished with a minimum fine of Rp.3,000,000.00 (three million rupiah) and a maximum fine of Rp.12,000,000.00 (twelve million rupiah) with a criminal sanction of minimum imprisonment of 3 (three) months and*" should be granted to the extent of the words "*...criminal sanction of maximum imprisonment of 12 (twelve) months, minimum imprisonment of 3 (three) months... and maximum imprisonment of 12 (twelve) months*".
- e. The petition with respect to Article 255 of Law Number 10/2008 should be granted because it is related to the granting of the

petition with respect to Article 188 paragraph (3) of Law Number 42/2008.

**[6.2] Constitutional Court Justice M. Arsyad Sanusi**

The General Elections as the medium of people's sovereignty implemented in a direct, public, free, confidential, honest and just manner must become the legal ideal for the organizers of the General Elections as well all levels of society. Article 22E paragraph (6) of the 1945 Constitution mandates that the General Elections shall be further regulated in law, including the General Elections of the President and Vice President as regulated in Law Number 42 Year 2008. One of the important issues regulated in the *a quo* law is people's participation in the General Elections.

In essence, the people's participation in the General Elections of the President and Vice President as regulated in Chapter XVII of Law Number 42 Year 2008, means the desire to participate in the political life which will potentially influence the ongoing political process, among other things through surveys or polls as well as quick counts based on the principle of the freedom of expression as the point of departure. According to Puddephaat, there are three aspects of the freedom of expression, namely: (i) seeking information and ideas, (ii) receiving information and ideas, and (iii) imparting information and ideas (Andrew Puddephat, *The Essentials of Human Rights: Freedom of Expression*, 2005), as also guaranteed by Article 28F of the 1945 Constitution.

In relation to the freedom to obtain and to impart information, the following matters may be conveyed:

- a. The freedom to obtain and convey information is a fundamental and universal human right, whereby every person, without exception, has the right to obtain and impart information. As a consequence, the state, in this case the Government, shall be obliged to open the channels of information;
- b. The intended freedom can be read in Article 19 of the Universal Declaration of Human Rights which reads *"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers"*;
- c. Access to information constitutes the basis for democratic life and the freedom of information constitutes a part of human rights;
- d. The state shall be obliged to respect, protect and fulfill such rights;
- e. The concepts of freedom to obtain and impart information, democracy and good governance are interrelated because the *a quo* freedoms allow the people to participate in controlling every policy measure of the Government in the governance of the state and the community;

The provisions of Article 188 paragraph (2) of Law Number 42 Year 2008 regarding the prohibition on announcing the results of a survey or poll

during the cooling off period implicates two legal values, namely the freedom to obtain and impart information which must be upheld, on the one hand, as well as the potential interference to comfort and order on the other hand. Similarly, the prohibition of the announcement of the results of a quick count on the day/date of voting as regulated by Article 188 paragraph (2) of the *a quo* Law also implicates two legal values, namely science-based freedom which must be upheld in a democratic state and the interference to public order due to anxiety and conflict which may arise within the community.

At this point, the Court is faced with two interests, two legal values, namely every person's interest to seek, obtain, own, store, process and impart information, *vis a vis* the obligation of the state to protect the people at large from the potential interference to the order and peace of the community. To address the aforementioned two issues, the following matters can be conveyed:

1. The freedom to seek, obtain, own, store, process and impart information, as well as the freedom to advance science and technology constitute inherent concepts in the contexts of human rights, which have the desire for every person to be able to express their thoughts, seek, receive as well as to impart information or ideas, using any kinds media;
2. The freedom to seek, obtain, own, store, process and impart information as well as the freedom to advance science and technology, *in casu* the activities of researchers in imparting information regarding the General Elections, are not absolute, but must submit to the law, because there is

- no guarantee that the activities of surveys and polls as well as quick counts, although conducted based on scientific principles, are free from the tendency to influence choices which favor a certain contestant in the General Elections. At this point, the state has the necessary role to maintain the quality of democracy and to maintain public order, so that the aforementioned information can be “stored” for a certain period of time and be announced to the public only after the elapse of a certain period of time;
3. Article 47 paragraph (5) of the Law regarding the General Elections of the President and Vice President regulates the prohibition of the broadcast of news, advertisements, as well as the track records of Candidate Pairs, and provides for criminal sanctions. However, the definition of the phrase “or other forms” in the aforementioned article is not explained, so as to open up the opportunity for the results of a survey or poll to be sponsored by a Candidate Pair in order to favor or disfavor a certain Candidate Pair;
  4. The limitation of the right to information has obtained legal recognition referred to in the European Convention on Human Rights which states as follows: *“The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health*

*or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”*

5. In relation to the limitation of the right to information, the formulation of the opinion of Prof. Soetandyo Wigjosoebroto, MPA would be proper that in the middle of the euphoria of the recognition of the sacredness of the citizens' civil rights with respect to their freedom and rights to also participate freely in every political process, the authority of the state officials in the supervision of public order shall be constituted to a minimum extent, whereas the right to the freedom of the nation to its maximum extent. Soetandyo also states that in its further development, when the citizens' rights to freedom and to practice politics turn out to be unable to guarantee the realization of the rights in the economic, social and cultural sectors, the authority of the state to act in an increasingly proactive manner becomes acceptable. Despite the state's hands-off attitude in the issue of maintaining the citizens' rights to freedom and to practice politics, the state has been able to work with justifiable authority to be proactive in creating a more conducive situation for every human being on earth in realizing their rights for optimizing their welfare in the economic, social and cultural sectors. (Soetandyo Wigjosoebroto, *Hubungan Negara and Masyarakat dalam Konteks HAM: Sebuah Tinjauan Historis dari Perspektif Relativisme Budaya Politik [Relationship*



*between the State and the Public in the Context of Human Rights: A Historical Review from the Perspective of Political Culture Relativism*]

6. Soetandyo further states that in the context of political and cultural relativism, under certain circumstances, the efforts to realize the universal principles of the Human Rights may be postponed or reserved. In the event that based on special considerations which are provisional and inevitable, an effort to enforce human rights – based on the claim of universality – will have the consequence of bringing more harm than benefit, then it would be unwise to force the continuation of the aforementioned effort.
  
7. Subsequently, in relation to the principle of the aforementioned Article 19 of the Universal Declaration of Human Rights and the European Convention on Human Rights, Toby Mendel (*Freedom of Information: A Comparative Legal Survey: UNESCO: 2004*) presents three parameters as the reference to determine whether information needs to be restricted, namely:
  - a. The relevant information has to be related to a goal included in law;
  - b. Its disclosure will potentially cause great harm which is not in line with the objective of the law;
  - c. Such harm to the objective must be greater than the interest of the community to obtain the aforementioned information.

8. Based on the aforementioned three parameters, it is appropriate to ask whether or not it is proper or necessary to have restrictions of the right to obtain and to impart information, *in casu* the results of a survey or poll during the cooling off period and the announcement of the results of a quick count when the General Elections of the President and Vice President are taking place. The arguments presented are as follows:
  - a. Conveyance of information regarding survey or poll results or quick count results should be in line with the goals to be achieved by the Law regarding the General Elections of the President and Vice President, namely to participate in providing information on whether the decision made by the people, or the actions of the organizers of the General Elections are in line with the goal to be achieved by the law, *in casu* the Law regarding the General Elections of the President and Vice President conducted in a direct, public, free, confidential, honest and just manner, insofar as it is not biased by a tendency to favor or disfavor any Candidate Pair;
  - b. During the period of transition to democracy, increasing mass communication has driven initially apathetic groups to be active in the political process, moved by their social and political awareness so as to increase the extremely conspicuous demands on the government. Huntington reminds us that the rapid development, and the participation of many new groups in politics within a short

period of time can disturb stability. Based on the aforementioned social and political reality, the conveyance of survey or poll results during the cooling off period and the announcement of quick count results on the day/date of the General Elections of the President and Vice President will potentially bring great harm which can happen not in line with the goal of the Law regarding the General Elections of the President and Vice President;

- c. The harm in the form of interruption to stability and disturbance to the peace of the community due to the conveyance of survey and poll results and the announcement of quick count results on the day/date of the General Elections of the President and Vice President is greater than the interest of the community to obtain the aforementioned information. The illustration is what happened with the survey results shortly before the General Elections of the President and Vice President, where some institutions announced survey results in public at the request of a Candidate Pair with the difference in the survey results being clearly depicted, for instance shortly before the legislative election, when there was an institution stating that the electability level of a certain party was the highest while another institution referred to another party as the winner. This means that in relation to the ideal objective to be achieved namely to realize democracy (namely, the people's participation to the greatest possible extent in the political and economic sectors),

the results obtained from a “requested” survey will in fact create anxiety and will eliminate public trust, leading to a threat to democracy itself.

9. The constitution mandates the protection of the interest of the people at large from potential things which can injure the principles of democracy, the protection of the sense of security and further protection of the integration of the nation and state. Similarly, to achieve successful development, national policies frequently require the willingness of the public to sacrifice and not to prioritize their individual rights, especially when the purpose is national stability (commonly defined as the absence of disturbance to the security and the well-maintained public order), and therefore, it is understandable that civil and political rights are restricted temporarily and within a limited scope.
10. The common interest to prevent the disturbance to the integration of the nation and the integrity of the state shall become prioritized over the fulfillment of the rights of a class or group of people, because the applicability of the rights argued by the Petitioners may be postponed insofar as the interest of the general public so requires. This is in line with the principle of *maximum disclosure and limited exception (MALE)*, meaning that although public information is open in nature, there is a small part of information which can be excepted. The *a quo* exception can be made in a strict and limited manner, namely that it is only justifiable if there

is a legitimate interest that must be protected. Therefore, even though the access to public information has to be maximum, exceptions are allowed to the extent of any legitimate and limited interest for a clearly limited time, for instance during the cooling off period or when the General Elections are taking place.

11. The provisions of Article 188 paragraph (2) of the *a quo* Law constitute a legal policy of the legislators to regulate the implementation of the General Elections. To the extent of the expert opinion explaining that the announcement of survey or poll results does not affect social peace and comforts, it is improper for this opinion to be used as the basis for justification considering that there is no legal guarantee that survey or poll results announced during the cooling off period and at the time of voting will not trigger conflicts or social vulnerability leading to interference to the comforts and order in the community which have happened during Regional Head General Elections in South Sulawesi, East Java and some other regions. At this point, regulation by the state is important so that the constitutional rights are also implemented by considering the greater national interest, and the willingness of some people claiming to have such constitutional rights to postpone the exercise of such constitutional rights for the interest of the general public.
12. The norms included in Article 188 paragraph (2) of the *a quo* Law do not at all negate citizens' constitutional right to conduct a survey or poll or for

- a social institution to conduct a quick count, rather such norms adhere to the principle of proportionate fulfillment of constitutional rights and the obligation of the state to provide a guaranteed sense of security to the community. Moreover, the characteristic of a quick count, survey or poll is that the participation of the community is not fully accurate, correct or perfect, but still bears potential errors, especially in that it is laden with interests. Therefore, it is improper to place the *a quo* provision in opposition to norms of the constitution.
13. Quick count results announced on the voting day also have the potential to trigger social sensitivities when the results announced turn out to be different from the official results of vote acquisition of the Candidate Pairs, especially when there is a slight difference in the number of votes acquired by the Candidate Pairs, namely smaller than or equal to the margin of error of the organizers of a survey, poll or quick count. Such cases will lead to extremely great conflict potential and disturbance to social order. Once again, the state is faced with the issue of how to guarantee peace and order in regulating social relations. Social order and peace do not belong to individual persons or a certain group but are longed for by and belong to the whole civilized society;
  13. As legal policies, the provisions of the *a quo* Law having the connotation of criminal sanctions for violations related to general elections are similar to the natural law, whereby every cause has an effect, a reaction follows

every action. Similarly, the prohibition of criminal acts must be followed by criminal sanction, and therefore, the provisions in Article 188 paragraph (2), paragraph (3), and paragraph (5), Article 228 as well as Article 255 of Law Number 42 Year 2008 are valid and are not inconsistent with the values of the constitution upheld in a democratic society.

14. Whereas to the extent that it regulates criminal sanctions related to general elections, Article 188 paragraph (5) of Law Number 42 year 2008 should be considered valid and not inconsistent with the values of the constitution upheld by a democratic society.

Based upon the foregoing thoughts and legal considerations, the Petitioners' petition should have been rejected in its entirety.

**SUBSTITUTE REGISTRAR,**

**Sgd.**

**Fadzlun Budi SN.**