



DECISION
Number 13/PUU-XV/2017

FOR JUSTICE BASED ON ALMIGHTY GOD

CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA

[1.1] [hereinafter the Court], hearing constitutional cases at the first and final instance, has handed down a decision in the case of Judicial Review of Law No. 13/2003 on Manpower against the 1945 Constitution of the Republic of Indonesia, which was filed by:

1. Name: **Ir. H. Jhoni Boetja, S.E.**

Born: Tanjung Karang, 2 June, 1963

Indonesian citizen

Job: Employee of PT. PLN (Persero) S2JB Region

Position: Chairman of the Regional Leadership Council of the Union of State Electricity Company Employees of PT. PLN (Persero) WS2JB

Address: Jalan Kapten A. Riva'i Number 37 Palembang - 30129

Hereinafter.....**Petitioner I;**

2. Name: **Edy Supriyanto Saputro, Amd.**

Born: Palembang, 2 April, 1973

Indonesian citizen

Job: Employee of PT. PLN (Persero) Palembang Area S2JB Area

Position: Secretary of the Regional Executive Board of the Union of State Electricity Company Employees of PT. PLN (Persero) WS2JB

Address: Jalan Kapten A. Riva'i Number 37 Palembang - 30129;

Hereinafter.....**Petitioner II;**

3. Name: **Ir. Airtas Asnawi**

Born: Palembang, 20 March, 1963

Indonesian citizen

Job: Employee of PT. PLN (Persero) S2JB Region

Position: Chairperson of the Branch Management Board of the State Electric Company Employees of PT. PLN (Persero) Regional Office S2JB

Address: Jalan Kapten A. Riva'i Number 37 Palembang - 30129

Hereinafter.....**Petitioner III;**

4. Name: **Saiful**

Born: Jambi, 5 May, 1963

Indonesian citizen

Job: Employee of PT. PLN (Persero) S2JB Region

Position: Chairperson of the Branch Management Board of the State Electric Company Employees of PT. PLN (Persero) Regional Office S2JB

Address: Jalan Urip Sumoharjo Number 2, Jambi

Hereinafter.....**Petitioner IV;**

5. Name: **Amidi Susanto**

Born: Lampung, 3 September, 1967

Indonesian citizen

Job: Employee of PT. PLN (Persero) Palembang Area S2JB Area

Position: Chairperson of the Branch Management Board of the State Electric Company Employees of PT. PLN (Persero) WS2JB Palembang Area

Address: Jalan Kapten A. Riva'i Number 37, Palembang

Hereinafter.....**Applicant V;**

6. Name: **Taufan, S.E.**

Born: Donok City, 26 December, 1964

Indonesian citizen

Job: Employee of PT. PLN (Persero) Region S2JB Area Bengkulu

Position: Chairperson of the Branch Management Board of the State Electric Company Employees of PT. PLN (Persero) WS2JB Area Bengkulu

Address: Jalan Prof. Dr. Hazairin, SH Number 8 Bengkulu

Hereinafter.....**Petitioner VI;**

7. Name: **Muhammad Yunus**

Born: Palembang, 20 October, 1983

Indonesian citizen

Job: Employee of PT. PLN (Persero) S2JB Area Regulating Area of Sumanjalu Distribution

Position: Chairperson of the Branch Management Board of the State Electric Company Employees of PT. PLN (Persero) WS2JB Area Sumanjalu

Address: Jalan Governor Hasan Bastari, Palembang

Hereinafter.....**Petitioner VII;**

8. Name: **Yekti Kurniasih, Amd.**

Born: Bandung, 24 September, 1989

Indonesian citizen

Job: Former employee of PT. PLN (Persero) S2JB Area Jambi Area

Position: Member of the Union of State Electricity Company Employees

Address: Jalan Urip Sumoharjo Number 2, Jambi

Hereinafter.....**Petitioner VIII;**

Hereinafter collectively referred to as.....**Applicants;**

[1.2] Having heard the statements from the Petitioners;

Having read the petition of the Petitioners;

Having heard and read the statement of the President;

Having read the statement of the House of Representatives of the Republic of Indonesia;

Having heard and read the statements of the Related Party, Indonesian Employers' Association (APINDO);

Having read the statement from the witness, PT. State Electricity Company (Persero);

Having examined the evidence of the Petitioners and APINDO;

Having read the conclusions of the Petitioners, the President and APINDO;

2. Facts of the Case

[2.1] Considering whereas the Petitioners have filed a petition, dated 30 January, 2017 which has been received at the Registrar's Office of the Constitutional Court (hereinafter referred to as the Registrar of the Court) on 2 February, 2017, referring to Receipt of Application File No. 17/PAN.MK/2017 and registered on 13 February, 2017 as No. 13/PUU-XV/2017, and which has been corrected and received by the Registrar of the Court on 6 March, 2017, outlining the following matters:

I. Authorities of the Constitutional Court

The Petitioners in the *a quo* case explain the provisions governing the authority of the Constitutional Court to review Law No. 13/2003 on Manpower Article 153

paragraph (1) point f against the 1945 Constitution of the Republic of Indonesia as follows:

1. Whereas Article 24C paragraph (1) of the 1945 Constitution grants the Constitutional Court “the authority to decide at the first and final instance, the decision being final, in reviewing the law against the Constitution, to settle disputes over the authorities of state institutions whose authorities are granted by the Law, the settle the dissolution of political parties, and to resolve disputes over election results (Exhibit P1);
2. Whereas Article 10 paragraph (1) letter a of Law Number 24/2003 on the Constitutional Court stipulates, "the Constitutional Court has the authority to decide at the first and final instance, the decision being final, in reviewing the law against the Constitution (Exhibit P2);
3. Whereas according to Article 12 paragraph (1) letter a of Law Number 4/2004 on Judicial Power, “the Constitutional Court has the authority to decide at the first and final instance, the decision being final, in reviewing the law against the Constitution (Exhibit P3);

II. Legal Standing

The Petitioners’ standing in the *a quo* petition for judicial review is as follows:

1. Whereas according to the provisions of Article 28C paragraph (2) of the 1945 Constitution, the second amendment states, "Everyone has the right to represent himself in the fight for the collective rights to develop the people, the nation, and the state" (Exhibit P1);

2. Whereas Article 28D paragraph (1) of the 1945 Constitution, the second amendment states, "Everyone has the fair right to recognition, guarantee, protection, and legal certainty and equal treatment before the law" (Exhibit P1);

3. Whereas Article 51 paragraph (1) of Law No. 24/2003 on the Constitutional Court reads:

The Petitioner shall be a party who considers its constitutional rights and/or authorities impaired by the enactment of a law, namely:

- a. an Indonesian citizen;
- b. a group under customary law provided that the group is still extant and in accordance with the development of society and the principles of the Republic of Indonesia as regulated by Law;
- c. a public or private legal entity; or
- d. a state institution (Exhibit P2).

4. Such that the petition for the judicial review of Article 153 paragraph (1) point f of Law No. 13/2003 on Manpower "which forbids workers/labourers from having blood and/or marriage relations with other workers/labourers in one company, unless otherwise regulated in an employment contract, company regulations, or a collective bargaining agreement" is contrary to the 1945 Constitution (Exhibit P5);

III. Reasons for the Petition

In a company, an employment contract is made between employers and workers, company regulations are made by the employer, while the collective bargaining agreement (*Perjanjian Kerja Bersama*) is made by employers and workers.

With regard to standing, the employment contract must defer to the collective labor agreement, and, moreover, company regulations are obsolete if there is a collective bargaining agreement in place. Nevertheless, there are similarities amongst them, namely that they regulate the rights and obligations of the parties and the terms of work. It is in these terms of employment that the rules restricting the right to marry, when it refers to marriage between workers, are usually regulated.

The rules which state that if two workers within one company are married, then one is obliged to leave or terminate the working relationship regulated within the employment contract, company regulations or collective bargaining agreement are stipulated in Article 153 paragraph (1) letter f of the Manpower Law. The law prohibits certain reasons for the termination of employment by employers, one of which being that employers are prohibited from terminating employment because a worker/labourer has a blood relation or marital ties with another worker in the same company, unless otherwise regulated in an employment contract, company regulations, or a collective bargaining agreement.

Insofar as the rule is included in the employment contract, company regulations or collective bargaining agreement, the worker/labourer is obliged to comply with said rule.

The Petitioner's constitutional rights and/or authority have been impaired because the enactment of Article 153 paragraph (1) letter f of Law No. 13/2003 leads to Termination of Employment due to the regulation in the Company Regulations, Employment Agreements, or Collective Bargaining Agreements, which certainly harms the Petitioner and labourers due to loss of their constitutional rights along with the loss of the guarantee of work and decent living.

In Article 28B Paragraph (1) of the 1945 Constitution, which was reiterated in Article 10 paragraph (1) of the Human Rights Law, "Everyone has the right to form a family and continue their descent through a legal marriage", then, paragraph (2) states that legal marriage can only take place on the free will of the prospective husband and the prospective wife in accordance with the provisions of the prevailing laws and regulations (Exhibit P8).

In the marriage law, Article 1 states, "marriage is a spiritual and physical bond between a man and a woman as husband and wife with the intention of forming a happy and eternal household under God Almighty" (Exhibit P6).

Whereas Article 2 states, "marriage is legitimate if conducted according to the laws of the respective religion and beliefs" (Exhibit P6).

Whereas marriage is prohibited, according to Government Regulation No. 45/1990 Article 8 "for persons with a direct line of ancestry or an eternal relationship, namely in-laws, stepchildren, and step-mother/father" (Exhibit P7).

If a company regulation, employment contract or collective bargaining agreement requires that where a husband and wife who work in the same company, one of them must leave, moreover if there is a termination of employment as

experienced by the Petitioner Yekti Kurniasih and many others, then certainly that Company Regulation, Employment contract, or Collective Bargaining Agreement, which comes under the legal umbrella of Article 153 paragraph (1) letter f of Law Number 13 of 2003, is clearly contrary to Article 28D paragraph (2) of the 1945 Constitution (Exhibit P1).

If Law No. 13/2003, Article 153 paragraph (1) letter f, which includes the words "except that which has been stipulated in the employment contract, company regulations, or collective bargaining agreements", is not deleted/nullified by the Court, there is a significant potential that employers will prohibit the marriage of fellow workers within a company and employments will continue to be terminated because of workers carrying out their religious orders through marriage, and indeed, the call to marry in the case of a mutual, loving relationship is difficult to deny; if there is compatibility and agreement, then marriage is inevitable.

Another problem that can arise is the decision of couple ultimately to not marry in order to remain in the company, and should the two parties then carefully separate there would be no problem, but this also gives rise to the possibility that they might choose to live together unmarried to bypass the company's regulations. This is starkly contrary to the values embraced by the Indonesian people, who still uphold the institution of marriage.

Restrictions on the right to family and the right to work are not necessary if every individual working in the company displays good morals and ethics.

The marriage of fellow employees in a company is actually an advantage to the company, because it can save company expenses relating to coverage of the family's health costs, whereby the company only bears one worker as the

representative of a family though there are in fact two employees, as opposed to one employee with a wife outside of the company, meaning that the company has the labour of only one employee but still bears the health costs of the wife and family.

If the company claims to be attempting to prevent corruption, collusion and nepotism within the company, according to the Petitioner, this is unreasonable because the conduct of corruption, collusion and/or nepotism depends upon the mentality of the individual.

If Article 153 paragraph (1) letter f, which contains the words "unless it has been regulated in an employment contract, company regulations, or collective bargaining agreement" is nullified by the Constitutional Court, the company, in this case the entrepreneur, can no longer include the prohibition of workers from having blood ties and/or marital ties within the employment contracts, company regulations, or collective bargaining agreements, whereby employers can terminate employment because the employee/labourer engages in marriage with a fellow employee of the same company.

With the nullification of the words "unless it has been regulated in an employment contract, company regulations, or collective bargaining agreement", the constitutional rights of the labourers/employees are protected.

For this reason, the Petitioner requests that the Constitutional Court cancel part of Article 153 paragraph (1) letter f of Law No. 13/2003 on Manpower, which reads "Unless it has been regulated in an employment contract, company regulation, or collective bargaining agreement" because it is contrary to the 1945 Constitution, specifically Article 28B paragraph (1) and Article 28D paragraph (2).

Whereas the Petitioner's Constitutional Right are attached to:

Article 28B paragraph (1) of the 1945 Constitution;

Article 28D paragraph (2) of the 1945 Constitution.

IV. Petitioners' Requested Petitem

1. To grant the petition;
2. To declare Article 153 paragraph (1) letter f of Act No. 13/2003 on Employment, which read "*unless otherwise regulated in an employment contract, company regulations, or a collective bargaining agreement*" annulled in part and contrary to the 1945 Constitution and to no longer have binding legal force pursuant to the decision of the Constitutional Court;
3. To publish this decision in the State Gazette of the Republic of Indonesia.

[2.2] Considering whereas in support of their arguments, the Petitioners have submitted written evidence, recorded and labelled P-1 to P-8 as follows:

Exhibit P-1 Photocopy of 1945 Constitution of the Republic of Indonesia

Exhibit P-2 Photocopy of Law No. 24/2003 on the Constitutional Court

Exhibit P-3 Photocopy of Law No. 4/2004 on Judicial Powers

Exhibit P-4 Photocopy of the Petitioners' data

Exhibit P-5 Photocopy of Law No. 13/2003 on Manpower

Exhibit P-6 Photocopy of Law No. 1/1974 on Marriage

Exhibit P-7 Photocopy of Government Regulation No. 45/1990 on Amendment to Government Regulation No. 10/1983 on Marriage and Divorce Permits for Civil Servants

Exhibit P-8 Photocopy of Law No. 39/1999 on Basic Human Rights

[2.3] Considering whereas with regard to the petition, the President has provided information in the hearing on 15 May, 2017, which essentially comprised the following information:

I. Principle Matters of the Petition

Whereas the Petitioners essentially requested a judicial review of the provisions of Article 153 paragraph (1) letter f of the Manpower Law, which reads:

“Employers are prohibited from terminating employment for the following reasons:

f. workers/labourers having blood ties and/or marital relations with other workers/labourers in the same company, unless it has been regulated in an employment contract, company regulations, or collective bargaining agreement.”

against the following:

Article 28B paragraph (1) of the 1945 Constitution, which reads:

"Everyone has the right to form a family and continue their lineage through legal marriage"

Article 28D paragraph (2) of the 1945 Constitution, which reads:

"Everyone has the right to work and fair and decent compensation and treatment in a working relationship"

for the following reasons:

Whereas the phrase "*unless it has been regulated in an employment contract, company regulation, or collective labor agreement*" in Article 153 paragraph (1) letter f of the Manpower Act gives rise to a great potential for employers to prohibit the marriage of fellow workers in the same company, leading even to termination of employment, which is contrary to Article 28B paragraph (1) and Article 28D paragraph (2) of the 1945 Constitution.

II. Legal Standing

In relation to the legal standing of the Petitioners, the Government is of the following opinion:

1. Whereas Article 51 Paragraph (1) of the Constitutional Court Law states:

A petition can be filed by a party who considers his/her constitutional rights and/or authorities to be impaired by the coming into effect of a law and who is:

- a. an Indonesian citizen;
- b. a group under customary law provided that the group is still extant and in accordance with the development of society and the principles of the Republic of Indonesia as regulated by Law;
- c. a public or private legal entity; or
- d. a state institution

The above provisions are clarified in the explanation, that what is meant by "constitutional rights" are the rights regulated in the 1945 Constitution;

Thus, in order for a person or party to be accepted as petitioner with legal standing in a petition for review of the law against the 1945 Constitution, he or she must first explain and prove:

- e. The qualifications in the *a quo* petition as referred to in Article 51 paragraph (1) of Act Number 24 of 2003 concerning the Constitutional Court as amended by Act Number 8 of 2011;
 - f. The constitutional rights and/or authorities deemed within said qualification to have been impaired by the coming into effect of the Law being reviewed;
 - g. The impairment of said constitutional rights and/or authorities of the Petitioner as a result of the coming into effect of the Law petitioned for review.
2. Whereas furthermore through Constitutional Court Decision No. 006/PUU-III/2005 and Constitutional Court Decision No. 11/PUU-V/2007 and subsequent decisions, the Court has established an understanding of impairment of rights upon the following five conditions, namely:
- a. the existence of the Petitioner's rights and/or authorities as granted by the 1945 Constitution;
 - b. the rights and/or authorities of the Applicant are deemed to have been impaired by the coming into effect of the legislation petitioned for review;
 - c. such losses must be specific and actual or at least potential in nature such that they can be logically and reasonable expected to occur;

- d. there exists a causal relationship between said loss and the enactment of the legislation petitioned for review;
 - e. there is the potential that with the granting of the petition, the deemed loss of rights will not and/or will cease to occur;
3. Whereas based on all the aforementioned descriptions, according to the Government, it remains to be questioned whether the Petitioner indeed qualifies as a party that considers its constitutional rights and/or authorities to be impaired by the coming into effect of the provisions of Article 153 paragraph (1) letter f of the Manpower Law and whether said constitutional impairments are specific and actual or at least potential in nature, and whether there is a causal relationship between the impairment and the enactment of the Law petitioned for review;
4. Whereas according to the Government there has been no loss suffered by the Petitioners, because in concrete terms both in the *posita* and *petitum*, the Petitioners have failed to identify concretely any constitutional impairment suffered by the implementation of Article 153 paragraph (1) letter f of the Manpower Law, which they perceive to contradict Article 28B paragraph (1) and Article 28D paragraph (2) of the 1945 Constitution, and the Petitioners' rights are not in fact obstructed, reduced, eliminated, restricted, complicated or harmed due to the enactment of the *a quo* provision. Thus, according to the Government, the claim of constitutional impairment by the Petitioners is clearly not proven.

Based on the above arguments, the Government is of the opinion that the Petitioners do not fulfil the requirements for legal standing, and it is appropriate that the

Honourable Justices of the Constitutional Court wisely declare that the petition cannot be accepted (niet ontvankelijke verklaard).

III. Government Statement on the Material Petitioned for Review

Whereas the fourth paragraph of the Preamble of the 1945 Constitution stipulates that one of the objectives of the Republic of Indonesia is to promote general welfare and social justice. Development of human resources is an integral part of the development of the nation according to both the principles of Pancasila and the 1945 Constitution of the Republic of Indonesia, and is implemented in the context of the development of Indonesian people as a whole and the development of Indonesian society as a whole to develop the dignity, values and self-esteem of the nation's workforce and to create a prosperous, just, and egalitarian society, both materially and spiritually.

Human resource development has many dimensions and relationships. It relates not only to the interests of the workforce but also to those of employers, the government and the community. Therefore industrial relations as a part of development of the workforce must be directed towards the continuation of harmonious, dynamic, and just industrial relations, while still encouraging the optimal participation of all Indonesian workers and labourers to achieve the aspirations of the Indonesian state.

Whereas the Manpower Law was established pursuant to a mandate in Article 27 paragraph (2), Article 28D paragraph (2), and Article 33 of the 1945 Constitution to achieve more technical regulation of the manpower sector, amongst others regulation of industrial relations. In other words, the regulations of industrial relations in Law 13/2003 are stipulated by the legal policy of the legislators.

The Manpower Law regulates matters relating to industrial relations, including protection of workers/labourers, protection of the basic right of workers/labourers to negotiate with employers, protection of the safety and occupational health of workers/labourers, special protection for female, child and disabled workers, as well as protection regarding wages, welfare, and the social security of workers.

One form of worker/labourer protection regulated in the Manpower Act is protection from the Termination of Employment (PHK). The provisions of Article 151 paragraph (1) of the Manpower Act explicitly state that employers, workers / laborers, trade unions / labor unions, and the government, must make every effort to terminate employment. All of these efforts are all positive activities which in the end can prevent layoffs.

Whereas the Manpower Act regulates the prohibition of employers from terminating employment for certain reasons, specifically in Article 153 paragraph (1) which reads:

“Employers are prohibited from using the following reasons to terminate employment:

- a. A worker/labourer is unable to enter work due to illness according to a doctor's statement for a period not exceeding 12 (twelve) months continuously;*
- b. A worker/labourer is unable to carry out work while fulfilling obligations to the state in accordance with the provisions of prevailing laws and regulations;*
- c. A worker/labourer is carrying out worship commanded by their religion;*
- d. A worker/labourer marries;*

- e. *A female worker/labourer gets pregnant, gives birth, has a miscarriage, or is breastfeeding her child;*
- f. *A worker/labourer has blood ties and/or marital relations with another worker/labourer in the same company, unless otherwise regulated in an employment contract, company regulations, or a collective bargaining agreement;*
- g. *A worker/labourer establishes, becomes a member and/or administrator of a trade union or labour union or carry out the activities of a trade union or labor union, whether outside of working hours or in working hours with the agreement of the employer or based on provisions stipulated in the employment contract, company regulations, or collective bargaining agreements;*
- h. *A worker/labourer reports the employer to the authorities regarding criminal conduct of the employer;*
- i. *There exists a difference in understanding, religion, political allegiance, ethnicity, skin colour, class, gender, physical condition, or marital status;*
- j. *A worker/labourer has a permanent disability, is sick due to a work accident or is sick resulting from a working relationship, according to a doctor's statement, where the period of recovery cannot be ascertained."*

Whereas one of the prohibitions referred to in Article 153 paragraph (1) letter f of the Manpower Law, is termination of employment due to the existence of blood ties or marital relations between workers/labourers within a single company,

unless it has been stipulated in the employment contract, company regulations, or collective bargaining agreement.

Whereas the intention of the *a quo* provision is basically to provide opportunity for those engaged in industrial relationships, both employers and employees, to stipulate otherwise, with the understanding that employment contracts, company regulations and collective bargaining agreements are agreements made by those engaged in industrial relations and are binding on the relevant parties.

Whereas Article 1 number 14 of the Manpower Law stipulates that "*an employment contract is an agreement between a worker/labourer and an employer, which contains the conditions of work and the rights and obligations of the parties*", while Article 1 point 20 regulates, "Company Regulations are regulations that are made in writing by employers and contain the terms of work and company rules", and Article 1 paragraph 21 further regulates, "*Collective bargaining agreements are agreements resulting from negotiations between one or more trade unions or labor unions registered with the relevant agency and an employer, or several employers or business associations, which contain terms of employment, and the rights and obligations of both parties.*"

Whereas the employment contract, company regulation, or collective bargaining agreement is a contract or agreement and constitutes law for those who hold it, as stated in Article 1338 of the Civil Code, which reads, "*All agreements made in accordance with the law apply as laws for those who make them. Such an agreement cannot be revoked without the further agreement of both parties or reasons determined by law. All agreements must be made in good faith.*"

Whereas by regulating the phrase "*unless it has been stipulated in an employment contract, company regulations, or collective bargaining agreement*" in Article 153 paragraph (1) letter f of the Manpower Act, basically the legislators recognise that the legal sources of and underlying the working relationship between an employer and an employee are employment contracts, company regulations and collective bargaining agreements. So that in substance, the authority to determine whether, with the existence of blood ties and/or marriage relations, employees can be laid off or allowed to continue working in the company lies with the agreement made by the relevant parties. As such, the employee should already know and be able to predict the consequences of any decision they make to marry a colleagues after the working agreement is made by both parties.

Whereas the *a quo* phrase is intended to accommodate the nature and type of work as well as the characteristics of the company, in particular its business; however, with these provisions that empower employment contracts, company regulations, or collective bargaining agreements must first go through a process of inspection by the Government in order to prevent coercion of unilateral intentions by the employer regarding the issue of blood relations and marital ties. In this case the Government will examine the substance of the employment contract, company regulations, or collective labor agreements, and if the contents are found to be contrary to the prevailing laws and regulations, the Government will provide corrections, as a form of supervision from the Government.

Whereas the phrase "*unless stipulated otherwise in an employment contract, company regulations, or collective bargaining agreement*" in Article 153 paragraph (1) letter f of the Manpower Law, is not contradictory to Article 28B

paragraph (1) or Article 28D paragraph (2) of the 1945 Constitution. Thus, the Petitioners' arguments are groundless and unfounded.

IV. Petitum

Based on the above explanations and arguments, the Government pleads with His Excellency the Chief Justice and Justices of the Constitutional Court to hand down the following decisions:

1. That the Petitioners do not have legal standing;
2. That the applicant's petition for review is refused or at least that the petition cannot be accepted (niet ontvankelijk verklaard);
3. That the President's Statement is accepted in its entirety;
4. That the provisions of Article 153 paragraph (1) letter f of Law No. 13/2003 on Manpower are not contrary to the provisions of Article 28B paragraph (1) and Article 28D paragraph (2) of the 1945 Constitution of the Republic of Indonesia.

[2.4] Considering whereas, according to the petition, the House of Representatives has provided a written statement to the Registrar's Office, dated 13 June, 2017, which essentially submits the following:

A. Provisions of the Manpower Law petitioned for review against the 1945 Constitution

The Petitioners have applied for Article 153 paragraph (1) letter f of the Manpower Law to be reviewed against Article 28B paragraph (1) and Article 28D paragraph (2) of the 1945 Constitution. Whereas the contents of Article 153 paragraph (1) letter f of the Manpower Law are as follows:

“Employers are prohibited from using the following reasons to terminate employment: [...]

f. A worker/labourer has blood ties and/or marital relations with another worker/labourer in the same company, unless otherwise regulated in an employment contract, company regulations, or a collective bargaining agreement; Constitutional Rights and / or Authorities of the Petitioners Regarded to Be Impaired By the Applicability of Article 153 paragraph (1) letter f of the Manpower Law

The Petitioners argue that their constitutional rights have been impaired and violated by the coming into effect of Article 153 paragraph (1) letter f of the Manpower Law, essentially as follows:

With the enactment of the *a quo* article, the Petitioners feel that their constitutional rights have been violated. In addition, the provisions of the *a quo* article contradict the provisions of the 1945 Constitution. The provisions in Article 153 paragraph (1) letter f of the Manpower Law have harmed the Petitioner with regard to guarantee of adequate employment and livelihood because of the enactment of the *a quo* provisions, which could lead to termination of employment. In addition, the *a quo* article also contradicts the provisions in Article 28B paragraph (1) of the 1945 Constitution to form families and propagate. This loss was experienced by one of the Petitioners, Yekti Kurniasih. This provision is also contrary to the provisions in Article 2 of Act No. 1/1974 on Marriage (hereinafter referred to as the Marriage Law) and the provisions of Article 8 of Government Regulation No. 45/1990 on

Amendment to Government Regulation No. 10/1983 on Marriage Permits (hereinafter referred to as PP 45/1990) (*vide* application page 5–7).

The Petitioners claim that the provisions in Article 153 paragraph (1) letter f of the Manpower Act are contrary to Article 28B paragraph (1) and Article 28D paragraph (2) of the 1945 Constitution, which are as follows:

- Article 28B paragraph (1) of the 1945 Constitution

"(1) Every person has the right to form a family and continue his/her lineage through a legal marriage."

- Article 28D paragraph (2) of the 1945 Constitution

"(2) Every person has the right to work and receive fair and reasonable compensation and treatment in a work relationship."

Whereas based on the descriptions of the petition, the Petitioners in their petition appealed to the Justices as follows:

1. To grant the petition;
2. To declare Article 153 paragraph (1) letter f of Law No. 13/2003 on Manpower which reads, "*unless stipulated otherwise in an employment contract, company regulations, or collective bargaining agreement*" contrary to the 1945 Constitution of the Republic of Indonesia and to no longer have binding legal force following the decision of the Constitutional Court;
3. To order this decision to be published in the State Gazette of the Republic of Indonesia.

B. Statement from the Indonesian Parliament

Regarding the arguments of the Petitioners as described in the *a quo* petition, the House of Representatives of the Republic of Indonesia in submitting their views first explains the legal standing as follows:

1. Legal Standing of the Petitioners

The qualifications for legal standing have been regulated in the provisions of Article 51 Paragraph (1) of the Constitutional Court Law, which states:

A petition can be filed by a party who considers his/her constitutional rights and/or authorities to be impaired by the coming into effect of a law and who is:

- a. an Indonesian citizen;*
- b. a group under customary law provided that the group is still extant and in accordance with the development of society and the principles of the Republic of Indonesia as regulated by Law;*
- c. a public or private legal entity; or*
- d. a state institution*

The constitutional rights and/or authorities referred to in the provisions of Article 51 paragraph (1) are confirmed in its explanatory memorandum as meaning "the rights stipulated in the 1945 Constitution of the Republic of Indonesia." Article 51 paragraph (1) confirms that only the rights explicitly regulated in the 1945 Constitution are included in "constitutional rights".

Therefore, according to the Constitutional Court Law, for a person or party to have legal standing to petition for judicial review of the 1945 Constitution, first he must explain and prove:

- a. That he qualifies as a Petitioner in the *a quo* petition as regulated in Article 51 paragraph (1) of the Law of the Constitutional Court;
- b. That the constitutional rights and/or authorities referred to in "Explanatory Memorandum of Article 51 paragraph (1)" are deemed to have been impaired by the coming into effect of the *a quo* law.

Regarding the limitation of constitutional harm, the Constitutional Court has provided an understanding and limitation of constitutional harm arising from the coming into effect of a law that it must fulfil five conditions (*vide* Constitutional Court Decision No. 006/PUU-III/2005 and Constitutional Court Decision No. 011/PUU-V/2007) as follows:

- a. the existence of the Petitioner's rights and/or authorities as granted by the 1945 Constitution;
- b. the rights and/or authorities of the Applicant are deemed to have been impaired by the coming into effect of the legislation petitioned for review;
- c. such losses must be specific and actual or at least potential in nature such that they can be logically and reasonable expected to occur;
- d. there exists a causal relationship between said loss and the enactment of the legislation petitioned for review;
- e. there is the potential that with the granting of the petition, the deemed loss of rights will not and/or will cease to occur;

If these five conditions are not fulfilled by the Petitioners in the case of reviewing the *a quo* Law, then in fact there is no damage to constitutional rights and/or authorities of the Petitioner by the enactment of the provisions of the articles of the *a quo* Law petitioned for review.

Responding to the arguments put forward by the *a quo* Petitioners, the Indonesian Parliament provides the following statement:

- a. Whereas the Petitioners argue that their constitutional rights have been impaired and violated by the coming into effect of Article 153 paragraph (1) letter f of the Manpower Law. However, the Petitioners' demonstration of legal standing does not explain the constitutional rights violated by the enactment of Article 153 paragraph (1) letter f of the Manpower Law. The Petitioners failed to provide a description of specific and actual or at least potential impairment as established by the Constitutional Court (vide Constitutional Court Decision No. 006/PUU-III/2005 and Constitutional Court Decision No. 011/PUU-V/2007).
- b. Whereas the Petitioners cannot prove a logical causal relationship between the harm suffered by the Petitioners and the coming into effect of the *a quo* article. The Petitioners are the management and members of the trade union who act for and on behalf of themselves through the joint petition who feel that the enactment of the provisions of the *a quo* article cause them harm as employees as a result of regulations regarding the permissibility of termination of employment in

the case of having blood ties and/or marital ties with other employees in the same company.

However, each Petitioner (Petitioner I - VIII) acting in his own name has failed to construct the specific impairment of his constitutional rights and/or authorities with the coming into effect of the *a quo* article, such that the Petitioners have suffered no apparent constitutional impairment. Thus, the petition is vague (*obscuur libel*) owing to the lack of violation of constitutional rights by the enactment of the *a quo* article. In the absence of such description, the *a quo* Petitioners do not fulfil the requirements for legal standing as stipulated in Article 51 paragraph (1) of the Constitutional Court Law.

- c. Whereas it is a general legal principle that where there is no interest, there is no claim. (In French, *point d'intérêt point d'action*; and in Dutch, *zonder belang geen rechtsingang*). This is the same as the principle contained in *Reglement op de Rechtsvordering (Rv)* especially Article 102, which adheres to the provision that there is “no claim without legal cause”. The requirement for legal interest has also been outlined in the requirements for legal standing as regulated in Constitutional Court Decision No. 006/PUU-III/2005, dated 31 May, 2005, and Constitutional Court Decision No. 11/PUU-V/2007, dated 20 September, 2007 which determines the necessity of a causal relationship between the loss of constitutional rights and/or authorities and the coming into effect of the law petitioned for review.

With respect to the legal standing of the Petitioner, the House of Representatives submits fully to their Excellencies the Justices of the Constitutional Court to consider and assess whether the Petitioner has legal standing or not as regulated by Article 51 paragraph (1) of the Constitutional Court Law and based on Constitutional Court Decision No. 006/PUU-III/2005 and Constitutional Court Decision No. 011/PUU-V/2007.

2. Material Review of Article 153 paragraph (1) letter f of the Manpower Law

Responding to the petition for review of Article 153 paragraph (1) letter f of the Manpower Law against the 1945 Constitution, DPR RI provides the following statement:

1. Whereas the opening of the fourth paragraph of the 1945 Constitution affirms that amongst the purposes of the establishment of the State Government of the Republic of Indonesia was the protection of the Indonesian nation and the Indonesian population as well as to promote general welfare. In promoting general welfare, the state is responsible for improving welfare so that the right to decent work and livelihood is a guarantee and a constitutional right of every citizen. The right to work can improve one's welfare so as to fulfil the needs of a decent living.
2. Article 1 paragraph (3) of the 1945 Constitution states that "Indonesia is a state that observes the rule of law". One characteristic of the rule of law is the supremacy of the law (AV Dicey) which means all efforts are made to uphold the law and maintain the place of the law in the highest position of all, and make the law a commander in the effort to

maintain and protect the stability of the nation and state (Abdul Manan).

3. Whereas in drafting the Manpower Law, the legislators have also paid attention to international standards such as ILO Conventions and UN Conventions, whether ratified by Indonesia or not. The provisions of Article 7 and Article 8 of the UN Convention on Economic, Social and Cultural Rights concerning the obligation of the state to ensure that every worker is treated fairly and without discrimination in all aspects of employment have also been included in the provisions of the Manpower Law.
4. Whereas the provisions in Article 153 paragraph (1) letter f of the Manpower Law which reads, "*unless stipulated otherwise in an employment contract, company regulations, or collective bargaining agreement*" adopts the principle of freedom of contract in contract law, where the provision can only be implemented if it has been agreed by both parties through an employment contract, company regulations or collective bargaining agreements. In addition, in formulating rules, the company is not allowed to enter provisions that are contrary to the provisions of the laws applicable where the company is domiciled or established. Provisions relating to contracts are regulated in Article 1320 of the Civil Code, which stipulates:

"In order to be valid, an agreement must satisfy the following four conditions: 1. there must be consent of the individuals who are bound thereby;

2. *there must be capacity to conclude an agreement;*
3. *there must be a specific subject;*
4. *there must be an admissible cause.”*
5. Whereas the employment contract is one of the agreements referred to in Book III of the Civil Code. As part of Book III of the Civil Code, the general principles contractual arrangements apply, one of which is the principle of *sun servanda pacta* stipulated in Article 1338 of the Civil Code. The principle of *pacta sun servanda* states that a contract constitutes a law for those who enter into it. Laws are part of the state law, and in observing Rule of Law, citizens must obey any contracts they enter into because, according to Article 1338 of the Civil Code, such contracts are law for those who make them. The employment contract is also binding because it is the result of an agreement between the parties that must arise without coercion, as stipulated in Article 1320 of the Civil Code, which regulates the legal terms of contracts. Therefore, such a contract or agreement cannot be revoked without further agreement between the relevant parties, namely the employer and the recipient of the work. Of course, the acceptance and rejection of an agreement or contract will lead to different consequences.
6. The House of Representatives is of the view that it is not true that the provisions of Article 153 paragraph (1) letter f of the Manpower Law are contrary to the freedom to form a family and continue one's lineage through legal marriage on the basis of the free will of the prospective

husband and prospective wife. Workers are free to marry anyone they want and feel suitable, but with the provisions of certain employment contracts, collective bargaining agreements or company regulations that prohibit marriage between co-workers of the same company, an employee may resign because of said provisions, which have been agreed upon and are binding on all workers in the agency. Conversely, if the worker insists on having a marriage with a fellow worker in the company where he works, then the worker has defaulted and he can be subject to certain sanctions in accordance with the provisions of the company and the prevailing laws and regulations.

7. Whereas in essence, the prohibition of marriage within a company is intended to maintain the professionalism of employees. In addition, the prohibition of marriage ties within a company is also intended to prevent conflict of interest between husbands and wives working in one company. Conflicts of interest can occur when individuals or organizations are involved in various interests, so that they can influence or motivate certain acts. A conflict of interest arises when someone in a certain position experiences an intersection between their professional and personal interests. Such a conflict of interests can make it difficult for the person to carry out certain duties. A conflict of interest can arise even if it does not cause unethical or inappropriate actions.
8. Whereas, according to Thomas Hobbes, justice is an organising structure based on an agreement, such that justice can be considered an act that has been regulated in an agreement. Employees who have

signed an agreement or work contract containing a rule that prohibits marital relations within the company must comply with these terms as agreed. In accordance with the theory of justice put forth by Thomas Hobbes, employees who violate the provisions contained within such an agreement can be said to be conducting unfair behavior and can disrupt the attainment of justice for others.

9. Whereas the right of every person to form a family and continue their lineage through a legal marriage is indeed one of the human rights stipulated in Article 28B paragraph (1) of the 1945 Constitution. However, this right is not included in any of the rights deemed irreducible by Article 28I of the 1945 Constitution and Article 4 of Law No. 39/1999 on Human Rights (hereinafter referred to as the Human Rights Law). Thus, under certain circumstances, it is possible that the right to form a family can be overridden. Article 153 paragraph (1) letter f of the Manpower Law is one such example of an article that overrides this right.
10. Such an instance of overriding is not only found in the Manpower Law, but also in the specific law that regulates marriage, namely Article 8 letter f of the Marriage Law. The article prohibits marriage between two people whose religion or other applicable regulations prohibit them from marrying. The existence of this article confirms that the prohibition of marriage can also be regulated in other laws and regulations, including the Manpower Law.

11. Whereas the termination of employment or the dismissal of an employee who has married with a fellow employee, meaning that the employee has violated the provisions agreed upon in the employment contract of collective bargaining agreement, such that they can be declared to have defaulted or violated the agreement made by the employer and employee when the contract was established between the parties, is a consequence that has been clearly regulated under agreement between the parties through the employment contract, collective bargaining agreements or company regulations. Therefore, it is not true that the provisions in Article 153 paragraph (1) letter f of the Manpower Law are contrary to the provisions in Article 28D paragraph (2) of the 1945 Constitution.

12. Whereas if there are problems with the employment contract, Law No. 2/2004 on Settlement of Industrial Relations Disputes (hereinafter referred to as Law 2/2004) has in fact regulated the procedures relating to industrial relations disputes between parties both outside the court and in court. Disputes relating to termination of employment are one form of industrial relations dispute, according to Article 1 number 1 of Law 2/2004.

Whereas based on the aforementioned arguments, the House of Representatives of the Republic of Indonesia pleads that the Constitutional Court hand down the following decisions:

1. That the Petitioners do not have legal standing so that the *a quo* petition cannot be accepted (*niet ontvankelijk verklaard*);

2. That the *a quo* petition is wholly rejected or at least that the *a quo* petition cannot be accepted;
3. That the statement from the Indonesian Parliament is admitted in full;
4. That Article 153 paragraph (1) letter f of Law No. 13/2003 on Manpower, especially where it states "*unless stipulated otherwise in an employment contract, company regulations, or collective bargaining agreement*" does not contradict the 1945 Constitution of the Republic of Indonesia;
5. That Article 153 paragraph (1) letter f of Law No. 13/2003 on Manpower, especially where it states "*unless stipulated otherwise in an employment contract, company regulations, or collective bargaining agreement*" retains binding legal force.

If the Honorable Justices of the Constitutional Court should be of a different opinion, the House of Representatives asks only that they hand down the fairest decision (*ex aequo et bono*).

[2.5] Considering whereas in the *a quo* case, the Indonesian Employers' Association (APINDO) has submitted its statement in the hearing on May 15, 2017, in essence as follows:

1. Concerning the application for judicial review of Article 153 paragraph (1) letter f of Law No. 13/2003 on Manpower, especially in the clause which states the words "*unless stipulated otherwise in an employment contract, company regulations, or collective bargaining agreement*" against Article 28B

paragraph (1) and Article 28D Paragraph (2) of the 1945 Constitution, we submit the following statement:

2. Whereas marriage between a male and a female employee in one company or one government agency has long occurred and can have both positive and negative impacts on the company and on the employees themselves, as well as other employees in the company.
3. Whereas the positive impact of marriages between fellow employees of one company include that the couple will emotionally strengthen their family relationships so that they feel safe and secure because they protect each other. However, there are also negative impacts associated with this sense of mutual protection, including the potential to reduce or even eliminate any objectivity in the working relationship between the employees and the company management. For example, an HRD Manager in a company employs the wife or husband of a senior, perhaps the General Manager, as a Supervisor, and at a later date said spouse of the HRD Manager's supervisor commits a disciplinary or other violation that may be subject to sanctions as stipulated in the Employment Contract, Company Regulations or Collective Bargaining Agreement. Under these conditions, it stands to reason that the HRD Manager will face an ethical conflict with regard to enforcing the rules of the company.
4. Whereas, considering these negative and positive impacts, the Government regulates Article 153 paragraph (10) letter f of Law No. 13/2003 with the intent to prevent negative occurrences in a company and to build good, professional and fair working conditions.

5. Whereas Article 28B Paragraph (1) of the 1945 Constitution, under Chapter XA concerning Human Rights, states that "*every person has the right to form a family and continue his lineage through a legal marriage*". Moreover, Article 1 of the Marriage Law affirms that "*marriage is a spiritual bond between a man and a woman as a husband and wife with the aim of forming a happy and eternal family or household based on the One and Only God*" and Article 33 the same Law affirms that "*Husbands and wives must love, respect, be loyal to and give both mental and physical support to each other*". Thus, it can be said that marriage is a right of every person, that it is sacred and that there is an obligation for a husband and wife to construct a very strong and "special" relationship.
6. Whereas, in principle, the company does not prohibit anyone from marrying, however if a husband and wife work in the same company, a conflict of interest may arise when making decisions within the company, which can also interfere with the objectivity and professionalism in their work—for example, with relation to the assessment of employee performance, to career development, to granting promotions, and giving sanctions and so forth—such that it will interfere with the sense of justice for other workers who do not have such a special relationship within the company, who certainly make up the majority, as stipulated in Article 28D paragraph (2) of the 1945 Constitution, which reads "*every person shall have the right to work and get fair and decent compensation and treatment in a working relationship*".
7. Whereas the provisions stipulated in the Manpower Law, Article 153 paragraph (1) letter f are not contradictory to the 1945 Constitution. They aim to protect the greater interest in safeguarding the rights of every citizen to

marry but as well to safeguard the rights of everyone who works to obtain fair treatment, where both of these are human rights equally regulated in Article 28J paragraph (1) of the 1945 Constitution, which states that "*Every person shall be obliged to respect the human rights of others in the orderly society, nation and state*" and paragraph (2) which reads "*In exercising their rights and freedoms, every person must submit to the restrictions set forth in law with the sole purpose of guaranteeing recognition and respect for the rights and freedoms of others and to fulfill just demands in accordance with moral considerations, religious values, and public order in a democratic society*".

Based on the above statement, APINDO is of the following opinion:

1. Whereas the provisions of Article 153 paragraph (1) letter f of the Manpower Law, which in principle affirms that employers are prohibited from terminating employment for the reason that employees have blood ties and/or marital ties with other employees in the same company, unless stipulated otherwise in an employment contract, company regulations, or collective bargaining agreement, are not contrary to Article 28B paragraph (1) and Article 28D paragraph (2) of the 1945 Constitution.
2. Whereas the provisions of Article 153 paragraph (1) letter f of the Manpower Law guarantees the conducive work relationships among employees, employers and company management, thus affecting the professionalism of work and providing justice between the employees themselves and the company.

Furthermore, the Indonesian Employers' Association (APINDO) has submitted an additional statement in the trial on June 5, 2017, which principally explains the following:

I. Habit is a Source of Formal Law

1. Whereas the prohibition on hiring male and female workers who have a marital relationship in one company or one government agency has long been standard, as has the provision against hiring employees who have blood relations within the same company, (exceptions for family companies) and has both positive and negative effects both on the company and on the employees themselves along with other employees of the company.
2. Whereas this provision has become a common practice in the business world, especially with regard to industrial relations, existing long before the birth of the Manpower Law. In Indonesia, habit and customary practice is a formal source of law with the following conditions:
 - a. There must be certain actions or deeds carried out repeatedly in the same case and conducted by many people;
 - b. There must be a legal certainty from the interested people or groups in that it is believed that the rules arising from the practice contain or entail good and worthy outcomes and have binding strength.
3. One common practice in the business world can be seen from a regulation made by the Indonesian Development Bank (BAPINDO) in 1973, now Bank Mandiri, which asserts, regarding marriage between employees of

BAPINDO, the prohibition on hiring employees who have a marital relationship .

Decree of the Board of Directors of the Indonesian Development Bank (BAPINDO) Number 6/1973 on Marriage Between Employees of BAPINDO (now Bank Mandiri) (Exhibit-1).

Article 1

"Persuant to this decree, the working relationship between Bapindo and an employee who marries a fellow Bapindo employee will be automatically terminated on the date of the marriage."

Article 2

"Termination of employment as referred to in Article 1 above, will apply to the employee who has the shortest working period of the two married employees, unless they in writing state otherwise."

Article 3

"The two employees who will be married must together notify Bapindo in writing one month prior to the wedding regarding their respective intentions related to the provisions of Article 2."

II. Implementation of the Principles of Good Corporate Governance Specifically in Relation to Prevention of Corporate Nepotism

1. Whereas in order to prevent nepotism in the company, provisions concerning the prohibition of hiring employees who have a marital relationship have occurred long before the emergence of the Manpower

Law. This provision can be seen from Directorial Decree of the Indonesian Development Bank (BAPINDO) No. 6/1973 on Marriage between Employees of BAPINDO (now Bank Mandiri) (Exhibit-1).

Article 1

"Persuant to this decree, the working relationship between Bapindo and an employee who marries a fellow Bapindo employee will be automatically terminated on the date of the marriage."

Article 2

"Termination of employment as referred to in Article 1 above, will apply to the employee who has the shortest working period of the two married employees, unless they in writing state otherwise."

Article 3

"The two employees who will be married must together notify Bapindo in writing one month prior to the wedding regarding their respective intentions related to the provisions of Article 2."

2. Whereas BAPINDO Directorial Decree Number 6/1973 regulates layoffs for employees who have marital relations in order to prevent the potential for nepotism, which is a very important factor in the banking world (banking sector and financial sector). However, following the enactment of the Manpower Law, especially in Article 153 paragraph (1) letter f, the provisions regulating the termination of employment are implemented through the existence of an agreement established jointly by both parties,

namely the employer and the employee, in an Employment Contract, Company Regulations, or Collective Bargaining Agreement.

3. Whereas the prohibition on hiring employees who have blood ties or marital relations have also been applied in State-Owned Enterprises (BUMN) which refer to the principles of Good Corporate Governance, the principle of Equality and Non-discrimination as stated in the SOE Minister's Circular No. SE-06/MBU/2014 on Prevention of Nepotism in State-Owned Enterprises (Exhibit–2).
4. Whereas referring to the SOE Ministry Circular in point 3 above, SOE companies including state-owned banking companies such as BNI, Mandiri, BRI, and other private banking companies will certainly apply the same provisions to their Company Regulations as stated in the Collective Labor Agreement (Exhibit–3).

III. Opening Job Opportunities for Other Family Heads

1. Whereas with the prohibition on hiring employees who have marital relations, which is applied by various companies in accordance with their respective conditions, employment opportunities expanded for other job seekers. This is to say that if, out of 1,000 employees in a given company, each is the head of a different family, the company can indirectly support the prosperity of 1,000 distinct families. On the other hand, if of those 1,000 employees, for example 200 are husbands and wives, each couple representing a single family, then in total, only 900 distinct families are supported, and opportunities for employment are indirectly limited for 100

other families, who cannot receive employment and prosperity from the company.

2. Whereas with the dismissal of one of the employees from a married couple, this does not limit the opportunity for that person to seek work in another company. There will be employment opportunities in other companies for the individual who has been laid off, based on his or her own ability or competence.

Based on this information, we argue the following:

1. Whereas with the phrase "*unless stipulated otherwise in an employment contract, company regulations, or collective bargaining agreement*" found in Article 153 paragraph (1) letter f of the Manpower Law, there is an opportunity for the Company and employees or Trade Unions within that company to regulate the management of industrial relations conflicts in the company in accordance with their respective conditions and capabilities by negotiating the desired terms and mechanisms, which of course will be included in a joint agreement namely the Employment Contract or Collective Labor Agreement.
2. Whereas the provisions of Article 153 paragraph (1) letter f of Act Number 13 of the Manpower Law which in principle affirms the prohibition from terminating employment on the grounds that employees have blood ties or marital relations with other employees of the same company, unless otherwise regulated in an employment contract, company regulations, or a collective bargaining agreement, are not contrary to Article 28B paragraph (1) or Article 28D paragraph (2) of the 1945 Constitution.

3. Whereas Article 153 paragraph (1) letter f of the Manpower Law guarantees the conduciveness of relations amongst employees and with the company management, thus improving professionalism and establishing justice between the employees themselves and the company.
4. Whereas, based on what has been conveyed above, we ask that the Honorable Justices of the Constitutional Court reject the entire petition for judicial review submitted by Ir. H. Jhoni Boetja, S.E. and friends.

Should the Honorable Justices be of another opinion, we ask for the fairest decision (*et aequo et bono*).

[2.6] Considering whereas in order to strengthen the statement, APINDO submits the following written evidence, listed as Exhibit PT–1 to Exhibit PT–3:

1. Exhibit PT–1: Photocopy of Announcement of Indonesian Development Bank (BAPINDO) Directoral Decision Number 6 of 1973 concerning Marriage between Employees of BAPINDO;
2. Exhibit PT–2: Photocopy of Minister of State-Owned Enterprises Circular Number SE-06/MBU/2014 concerning Prevention of Nepotism in State-Owned Enterprises;
3. Exhibit PT–3: Photocopy of the 2015 BNI Collective Bargaining Agreement, Article 69;

[2.7] Considering whereas with respect to the *a quo* petition, PT. PLN (Persero) has submitted its statement, received at the Registrar's Office on 12 June, 2017, which in essence explains the following:

1. Article 153 paragraph (1) letter f of the Manpower Law regulates that employers are prohibited from terminating employment because employees have blood ties and/or marital relations with other employees within the same company, unless otherwise regulated in an employment contract, company regulations, or a collective bargaining agreement.
2. The rules or code of ethics that governs the marital relations amongst employees varies from company to company. PT. PLN (Persero) in particular has special characteristics in the regulation of termination of employment due to marital relations amongst employees with consideration to professionalism and the prevention of conflicts of interest amongst employees that can harm the company's performance. Employee reputation does not distinguish between personal issues and professional matters that have a negative effect on the company and has a negative impact on the employee's image itself.
3. Whereas, as a matter of background, PT. PLN (Persero) and the Trade Union agreed to the regulation marriage amongst employees in the Second Addendum to the Collective Bargaining Agreement dated 11 October, 2013 as follows:
 - a. In the 1974 Marriage Law, it is regulated that marriage is a spiritual and physical bond between a man and a woman as husband and wife with the intention of forming a happy and eternal family or household in the eyes of God Almighty. The husband and wife must love and respect each other, be faithful and provide each other mental support. Thus, the marital bond is a special bond, a strong and special, physical and spiritual bond between husband and wife.

In terms of industrial relations, this marital bond has the risk of potentially disrupting and/or harming the professionalism of the working relationship, including as follows:

i. In terms of conflicts of interest: collusion, unequal treatment

Conflicts of interest occur when employees who are husbands wives have a personally beneficial position either directly or indirectly as a result of the marital relationship, which in turn affects the business interests of the company. If there are employees within one who marry and both happen to hold strategic positions or functions, then there is the potential to create a conflict of interest.

Example:

- a) Employee A is HR manager, and his wife is undergoing a fit-and-proper-person test for the selection of a certain position in Employee A's office.
- b) Employee A is General Manager, and his wife is Procurement Officer.
- c) Employee A is an IT engineer, and his wife works in Sales; secure data concerning electricity sales stored on the PLN database and accessible to Employee A could be used for his wife's personal interests in the business of buying and selling electricity.

ii. From the perspective of the Talent Pool

Inter-employee marriages can create obstacles for companies in fostering the careers of the employees concerned. For example, there is a position available to an employee who has the quality and potential to occupy said position, but because this position influences the position/function of another employee, who happens to be the spouse of the first employee, the company cannot give the position to the employee in question, and thus the company loses potential value from filling the position with the best person for the job.

With the available resources, the company can focus more on carrying out the strategic functions of employee competency development rather than tending to what is essentially an administrative matter, so that employees are better monitored for career development in a limited job structure.

The company will professionally place employees according to their competence, so that employees get career coaching without being constrained by factors such as marriage. Thus, there is harmony between the personal interests of employees and the interests of the company in proportion to the condition of the company.

iii. Requests for / Refusal of mutations interfering with professionalism

For PLN, whose business processes are integrated and located throughout Indonesia, employee mutations are common, especially for the needs of the workforce. Upon becoming a PLN employee, the employee concerned is aware of the consequences of working at PLN and is willing to be placed in any one of the PLN work units.

The husband and wife relationship can affect the number of mutations, with employees requesting or refusing mutation on personal grounds. A husband and wife living apart is not desirable in a marriage, and this matter is also regulated in Article 34 of the Marriage Law:

(1) The husband and wife must have a permanent residence.

(2) The place of residence referred to in paragraph (1) of this article shall be determined by the husband and wife together.

The business/activities of the PLN certainly may not create a barrier to husbands/wives sharing a permanent residence, because the marital relationship is stronger and more sacred than the industrial relation; thus there is an obstacle to increasing professionalism, which causes linear interference with the company's performance.

- b. The type of business is one of the main considerations in the regulation of marital relations within a company. Some companies whose business and transaction types carry high risk and highly prioritise quality of service and professionalism prohibit marriage amongst employees (banks, insurance companies, integrated businesses, PLN, etc.).

Every company has different characteristics, for example: multinational business, nationwide integrated business, regional businesses, confidentiality/trust-based businesses, high-tech businesses, etc. Whereas the Manpower Law does not regulate industrial relations specific to the characteristic of the company. Therefore the Manpower Act provides an opportunity for employers and employees to regulate work procedures

through employment contracts, company regulations, and/or collective bargaining agreements.

PLN is a company whose business processes run both upstream and downstream with numerous supporting businesses and work units in locations spread throughout Indonesia. Thus the human resources that constitute the PLN Workforce must be able and willing to work optimally across work locations throughout Indonesia.

The PLN workforce is prepared to increase every year and requires workers who are ready and capable to run the electricity business professionally, and PLN must minimize the risk of potential conflicts of interest that could interfere with the performance of the company. In this regard, the existence of Article 153 paragraph (1) letter f of the Manpower Law actually provides legal certainty and supports professionalism.

c. From a Legal Juridical Perspective

i. Article 1338 of the Civil Code

Article 1338 of the Civil Code states that all agreements made in accordance with the law apply as laws for those who make them. The agreement cannot be revoked absent additional agreement between both parties or other reasons determined by law. Such agreements must be made in good faith.

Thus each party is given the freedom to agree on the contents of an agreement, a principle known as freedom of contract. In the agreement are written the rights and obligations that are binding on each party.

Each interested party has freedom of contract. The interests of the parties are then stated in the agreement, which contains the binding rights and obligations and must be obeyed by each party that agrees.

The principle of freedom of contract means that the parties who will enter into an agreement/contract do so freely and without force. The parties cannot be forced to agree because it contradicts the objective requirements in Article 1320 of the Civil Code, namely the agreement of those who bind themselves.

Referring to the provisions in Article 153 paragraph (1) letter f of the Manpower Law provides space for employers and workers to regulate marital relations as a part of industrial relations insofar as they are stipulated in the Employment Contract, Company Regulations and/or Collective Bargaining Agreements.

Article 1 paragraphs 14, 20 and 21 of the Manpower Law regulate as follows:

14. An Employment Contract is an agreement between an employee and an employer that contains the terms of employment and the rights and obligations of the parties.

20. Company regulations are regulations that are made in writing by employers that contain the terms of work and company rules.

21. A Collective Bargaining Agreement is an agreement that results from negotiations between a trade union/labor union or several trade unions/labor unions, which are recorded with the agency responsible

for labor affairs with employers, or several employers or employers' associations and contain working conditions, and the rights and obligations of both parties.

Based on these regulations, the arrangement of termination of employment due to marital relations is permitted by law provided there is prior agreement between the parties outlined in the Employment Contract, Company Regulations and/or Collective Bargaining Agreement.

Employees and/or trade unions are given the freedom to agree or not to an Employment Contract and employers cannot force prospective workers to sign an Employment Contract nor a Collective Bargaining Agreement. Therefore, if the employee agrees to a contract, then that employee consciously submits to and must comply with the contents of the contract, which then assumes legal force for the relevant parties (principle of *pacta sunt servanda*). Judges or third parties must respect the substance of such an agreement made by the parties, as it constitutes a law for those parties.

All provisions and codes of ethics that have been regulated by companies must be obeyed by both employees and employers. Employees who have agreed to the Employment Contract are bound to the obligations and rights contained within as well as company regulations.

ii. Law No. 13/2003 on Manpower

Article 1 point 15 of the Manpower Law regulates that the employment relationship is a relationship between employers and employees based on the Employment Contract, which contains factors regarding work, wages and command.

Here, command is the authority possessed by the employer over the employee so that all actions carried out by the employee are in accordance with the interests of the company provided they do not conflict with the Collective Bargaining Agreement and Company Regulations. Commands can be in the form of asking the employee to do something or not to do something contained within the Employment Contract or Company Regulations.

Based on these provisions, employers can apply rules that require or prohibit an action that aims to improve the company's performance and improve service and professional attitudes.

Article 61 Paragraph (1) Sub-Paragraph d of the Manpower Law regulates that the Employment Contract shall expire if there circumstances arise or events occur that are included in the Employment Contract, Company Regulations, or Collective Bargaining Agreements as causes for termination of employment.

In accordance with the provisions of the aforementioned article, the company can make rules to regulate certain circumstances which, should they occur within the company and are enacted by the employee, the company can terminate the employment relationship.

iii. Law No. 40/2007 on Limited Liability Companies, Article 92 paragraph (1) states that the Board of Directors conducts the management of the company for the benefit of the company and in accordance with the goals and objectives of the company.

Article 97 paragraph (2) of the Limited Liability Company Law states: *Management as referred to in paragraph (1) must be conducted by each member of the Board of Directors in good faith and with full responsibility.*

The Board of Directors is authorised to issue policies and rules in its management of company activities. All policies and rules issued by the Board of Directors are solely for the benefit of the company implemented in good faith and with full responsibility. Therefore, the company can regulate that which is good for its business interests, including regulating matters that have the potential to interfere with the professionalism, such as the presence of marital relations amongst the workforce.

Entrepreneurs and companies alike need to be given a proper and fair legal guarantee to run their businesses and drive the economy, as Article 28D paragraph (1) of the 1945 Constitution states::

"Everyone has the right to fair recognition, guarantee, protection and legal certainty and to equal treatment before the law".

4. As described above, PLN's business has specificity, namely processes that run both up and downstream with various supporting businesses and work

units spread throughout Indonesia. Thus, to avoid any conflicts of interest, according to the talent pool, PLN and the trade unions have reached an agreement in the Addendum of the Collective Bargaining Agreement, namely applying Article 153 paragraph (1) letter f of the Manpower Law to regulate the termination of employment of employees who have marital relations with other workers in the company.

5. Marriage amongst employees has the potential to interfere with the company's interests and performance due to conflicts of interest, reducing employee professionalism so that the company is less flexible in determining policies, especially policies in the career development of its employees. To minimise this risk, Article 153 paragraph (1) letter f of the Manpower Law actually provides legal guarantees for employers to conduct their business properly and professionally as well as guarantees for workers in carrying out their work relationships professionally to obtain a decent livelihood.
6. Whereas Article 153 paragraph (1) letter f of the Manpower Law provides a legal guarantee allowing companies and employees to make rules regarding termination of employment due to marriages amongst employees as long as those rules are stipulated in the Employment Contract, Company Regulations, and/or Collective Bargaining Agreement, with the intention of improving the company's performance and minimising conflicts of interest. Agreements in the form of Employment Contracts, Company Regulations, and Collective Bargaining Agreements provide appropriate and fair legal guarantee in accordance with the law and Article 28D paragraph (1) of the 1945 Constitution for employers and employees.

[2.8] Considering whereas the Petitioners, the President and the Related Parties (Indonesian Employers' Association) each have submitted written statements received at the Registrar's Office of the Court respectively on 13 June, 2017 and 14 June, 2017, principally stating their positions;

[2.9] Considering whereas, to keep this decision concise, the full proceedings of the trial recorded in the minutes of the trial, which should be considered inseparable from this decision;

3. Legal Considerations

Authority of the Court

[3.1] Considering, whereas under Article 24C paragraph (1) of the 1945 Constitution and Article 10 paragraph (1) letter a of Law No. 24/2003 on the Constitutional Court as amended by Law No. 8/2011 on Amendment to Law No. 24/2003 on the Constitutional Court (State Gazette Year 2011 No. 70, Supplement to State Gazette No. 5226, hereinafter referred to as the Constitutional Court Law), and Article 29 Paragraph (1) letter a Law No. 48/2009 on Judicial Power (State Gazette Year 2009 No. 157, Supplement to State Gazette No. 5076, hereinafter referred to as Law No. 48/2009), one of the Constitutional Court's authorities is to judge at the first and final instance and to offer the final decision in review of the Law against the Constitution;

[3.2] Considering whereas since the Petition is testing the constitutionality of the norms of the Law, *in casu* Article 153 paragraph (1) letter f of Law No. 13/2003 on Manpower (State Gazette of the Republic of Indonesia Number 39 of 2003, Supplement to the State Gazette of the Republic of Indonesia Number 4279, hereinafter referred to as the Manpower Law) against the 1945 Constitution, the Court has the authority to hear the *a quo* petition;

Legal Standing of Petitioners

[3.3] Considering, whereas, under Article 51 paragraph (1) of the Constitutional Court Law and its Explanation, those who may apply for Review of the Law against the 1945 Constitution are those who consider their constitutional rights and/or authorities conferred by the 1945 Constitution impaired by the enactment of a Law, namely:

- a. an Indonesian citizen;
- b. a group under customary law provided that the group is still extant and in accordance with the development of society and the principles of the Republic of Indonesia as regulated by Law;
- c. a public or private legal entity; or
- d. a state institution

Accordingly, the Petitioners must demonstrate in advance:

- a. standing as Petitioners in accordance with Article 51 paragraph (1) of the Constitutional Court Law;
- b. Impairment by enactment of the law for which the appeal is sought of rights and/or authorities granted by the 1945 Constitution;

[3.4] Considering also that the Court has, since Constitutional Court Decision No. 006/PUU-III/2005, dated 31 May, 2005 and Constitutional Court Decision No. 11/PUU-V/2007, dated 20 September, 2007, as well as subsequent decisions, which offer the opinion that constitutional rights/authorities, as referred to in Article 51 paragraph (1) of the Constitutional Court Law, must fulfil five the following conditions:

- a. That the constitutional rights and/or authorities of the Petitioners have been granted by the 1945 Constitution;
- b. That the Petitioner's constitutional rights and/or authorities are deemed by the Petitioners to have been impaired by the Law petitioned for review;
- c. That the aforementioned impairment of constitutional rights and/or authorities is specific and actual or at least potential in nature, which can be logically assumed to occur;
- d. That there is a causal relationship between the impairment and the enactment of the Law petitioned for review;
- e. That there is a possibility that with the granting of the petition, the perceived constitutional and/or authority will not or will no longer occur.

[3.5] Considering whereas based on the description of the provisions of Article 51 paragraph (1) of the Constitutional Court Law and the requirements for impairment of constitutional rights and/or authorities as described above, the Court will further consider the legal standing of the Petitioners as follows:

[3.5.1] Whereas the legal norms petitioned for constitutional review in the *a quo* petition are Article 153 paragraph (1) letter f of Law 13/2003;

[3.5.2] The Petitioners argue that:

1. Petitioners I to VII are employees of *PT. PLN (Persero)* and the *Pengurus Dewan Pimpinan Serikat Pegawai Perusahaan Listrik Negara* and Petitioner VIII is a former employee of *PT. PLN (Persero)*; all are individual Indonesian citizens, as referred to in Article 51 paragraph (1) letter a of the Constitutional Court Law along with its explanatory memorandum;

2. The Petitioners have the potential to experience constitutional loss; moreover, many workers have experienced actual losses with the coming into effect of the *a quo* Law;
3. With reference to Article 28C paragraph (2) of the 1945 Constitution, which states, "*Every person shall have the right to improve him/herself through struggle for the collective rights to develop his/her society, nation and state.*", it can be said that the Petitioners have legal standing to fight for the guarantee to maintain employment in the event of termination of employment;
4. Article 28D Paragraph (1) of the 1945 Constitution states, "*Every person shall have the right of recognition, guarantee, protection and certainty before a just law, and of equal treatment before the law*"
5. Based on the foregoing description, the Petitioners have the legal standing and the constitutional interest to submit petition for the review of Article 153 paragraph (1) letter f of Law 13/2003 against the 1945 Constitution, because according to the Petitioners the contents of the article lead to the termination of the Petitioners' employment over their engagement in marriage within one company, such that the Petitioners lost their job security and access to a decent living;

[3.5.3] Whereas based on the provisions of Article 51 paragraph (1) of the Constitutional Court Law, in relation to the constitutional impairment claimed by the Petitioners, according to the Court, it is within reason that Petitioners have legal standing to file the *a quo* petition;

[3.6] Considering whereas because the Court has the authority to hear the *a quo* petition and the Petitioners have the legal standing to file the *a quo* petition, then the Court will further consider the principal issue of the petition;

Principal Matters of the Petition

[3.7] Considering whereas the Petitioners argue that Article 153 paragraph (1) letter f of the Manpower Law is contradictory to Article 28C paragraph (2) and Article 28D paragraph (1) of the 1945 Constitution, with arguments which are essentially as follows:

- a. Establishing a family and continuing one's lineage through a legal marriage is a constitutional right guaranteed by Article 28B paragraph (1) of the 1945 Constitution. It is also affirmed in Article 10 paragraph (1) of Law Number 39/1999 on Human Rights. Meanwhile, legal marriage can only take place at the free will of the prospective husband and prospective wife in accordance with the provisions of the prevailing laws and regulations. The existence of the provisions in Article 153 paragraph (1) letter f of the Manpower Law has the consequence that employers will prohibit the existence of marriages amongst fellow employees of one company. Because according to the Marriage Law a legal marriage is valid once carried out in accordance with religious norms, the *a quo* Law also prohibits people from carrying out their religious duties;
- b. The provisions contained in Article 153 (1) letter f of the Manpower Law eliminate the job security of the Petitioners and their right to a decent living and fair compensation and treatment in a working relationship as guaranteed by Article 28D paragraph (1) of the 1945 Constitution. If the company reasons that such provisions are necessary for the prevention of corruption, collusion and nepotism, this reason is unacceptable because corruption, collusion and nepotism are all dependent upon the mentality of the respective parties;

c. In fact, marriage between two employees within a company actually benefits the company because it can save company expenses in terms of handling the health costs of the employees' families given that the company will only have to cover one employee and family though there are two employees in the company, where either the husband or the wife is appointed guarantor who will be registered with the company concerned.

[3.8] Considering whereas to support their argument, the Petitioners have submit written evidence, Exhibit P-1 through Exhibit P-8, which are fully contained in the Duduk Perkara;

[3.9] Considering whereas the House of Representatives has submitted a written statement to the Registrar's Office of the Constitutional Court dated 13 June, 2017 (as detailed in the Duduk Perkara);

[3.10] Considering whereas the President, represented by the Minister of Law and Human Rights and the Minister of Manpower, has delivered verbal statements at the Plenary Session on 15 May, 2017 and has submitted a written statement to the Registrar of the Constitutional Court dated 15 May, 2017 (as detailed in the Duduk Perkara);

[3.11] Considering whereas the Related Parties of the Indonesian Employers' Association (APINDO) have submitted verbal statements and have submitted written statements at the Plenary Session on 15 May, 2017 and 5 June, 2017 (as detailed in the Duduk Perkara);

[3.12] Considering whereas the Giver of Information to PT. PLN (Persero) has submitted a written statement to the Registrar of the Constitutional Court on 12 June, 2017 (as detailed in the Duduk Perkara);

[3.13] Considering whereas after the Court has carefully examined the petition, the Petitioner's written evidence, the DPR's written statement, the President's oral and written statements, the Indonesian Employers Association's (APINDO) statement, the written statement of PT. PLN (Persero), written evidence of the Indonesian Employers Association (APINDO), the written conclusion of the Petitioner, written conclusion of the President, and written conclusion of the Indonesian Employers Association (APINDO), the Court considers the following:

[3.13.1] Whereas Article 28D paragraph (2) of the 1945 Constitution states, "*Everyone has the right to work and receive fair and reasonable compensation and treatment in an employment relationship*". Correspondingly, Article 23 paragraph (1) of the UN Declaration of Human Rights also affirms, "*Everyone has the right to work, has the right to freely choose employment, has the right to fair and favorable labour conditions and is entitled to protection from unemployment*". The constitutional rights stipulated in Article 28D paragraph (2) of the 1945 Constitution constitute human rights that fall under economic, social and cultural rights. Unlike cases concerning human rights that call under civil and political rights and whose fulfillment is actually carried out with as little as possible state interference—in fact, within certain limits, the state must not intervene—the fulfillment of rights classified as economic, social and cultural rights require the active role of the state according to the capabilities or resources of each country.

[3.13.2] Whereas Article 28I paragraph (4) of the 1945 Constitution affirms, "*Protection, promotion, enforcement and fulfillment of human rights are the responsibility of the state, especially the government*". Therefore, regardless of type or category, the responsibility of the state as referred to in Article 28I paragraph (4) of the 1945 Constitution is still attached to the state, especially the Government. It also applies to the constitutional rights which are at issue in the *a quo* petition, in this case, specifically the right to work and to get proper and fair compensation and treatment in the employment relationship and the right to form a family and continue one's lineage through a legal marriage. Although the responsibility to protect, advance and fulfill human rights is affirmed by the Constitution to be the responsibility of the state, especially the government, it does not mean that institutions or individuals outside the state are not obliged to respect the existence of these rights. Because, the essence of every right that a person has always creates an obligation on the other party or person to respect the existence of that right.

[3.13.3] Whereas, furthermore, the right to work is also related to welfare rights. Therefore, Law Number 39/1999 on Human Rights (Human Rights Law) affirms the provisions contained in Article 28D paragraph (2) of the 1945 Constitution. Article 38 paragraph (1) of the Human Rights Law states, "*Every citizen, in accordance with his talents, skills and abilities, has the right to a decent living.*" In paragraph (2), "*Every person has the right to freely choose the job he likes and is also entitled to fair employment conditions*". This provision is in line with the provisions contained in Article 6 paragraph (1) of the International Covenant on Economic, Social and Cultural Rights, which have been ratified by Law Number 11/2005 on Approval of the International Covenant on Economic, Social and Cultural Rights, and which states, "*The States party to the Covenant recognise the right to work, including the right to*

make a living through employment chosen or received independently, and shall take appropriate steps to protect this right”.

The considerations described in subparagraphs [3.13.1] to subparagraphs [3.13.3] above show that the obligation to protect the right to obtain employment is not only a constitutional obligation of the state but also an obligation born of international law, in this case arising from Indonesia's participation in the International Covenant on Economic, Social, and Cultural Rights. It is true that the Constitution gives constitutional authority to the state to place restrictions on human rights, but that authority is subject to the requirements specified by the Constitution, as will be further elaborated in the considerations below.

[3.13.4] Whereas if the provisions contained in the 1945 Constitution, the Human Rights Law, Universal Declaration of Human Rights, and International Covenant on Economic, Social and Cultural Rights are related to Article 153 paragraph (1) letter f of the Manpower Law, then *a contrario* a company that requires employees not to have blood ties and/or marital relations with other employees of the same company and uses it as a basis for termination of employment for the employee concerned, The Court considers that such a regulation is not in line with the norms in Article 28D paragraph (2) of the 1945 Constitution, Article 38 paragraph (1) and paragraph (2) of the Human Rights Law, Article 6 paragraph (1) of the International Covenant on Economic, Social, and Cultural Rights (International Covenant on Economic, Social and Cultural Rights) which has been ratified by Law Number 11/2005, and Article 23 paragraph (1) of the UN Human Rights Declaration as referred to above. Blood ties or marital relationships are destiny that cannot be planned or circumvented. As such, incorporating a person's destiny into conditions that override the fulfillment of human rights, in this case the right to work and the right to form a family, cannot be

accepted as a constitutionally valid reason. In accordance with Article 28J paragraph (2) of the 1945 Constitution, restrictions on human rights can only be placed with the sole purpose of guaranteeing recognition and respect for the rights and freedoms of others and to fulfill just demands in accordance with moral considerations, religious values, security and public order in a democratic society.

Restrictions as contained in Article 153 paragraph (1) letter f of the Manpower Law do not meet the requirements for respect for the rights and freedoms of others because there are no rights or freedoms of others who are disturbed by the existence of blood and/or marital relations. Likewise there are no moral norms, religious values, security factors, nor public order factors that are disturbed by the fact that employees in one company have blood and/or marital relations.

[3.14] Considering whereas the Indonesian Employers' Association (APINDO), and PT. PLN (Persero), stated that Article 153 paragraph (1) letter f of the Manpower Law is implemented internally with the intention of preventing detrimental occurrences in the company, building a positive, professional and fair working environment and preventing potential conflicts of interest in taking decisions within the company. The Court is of the opinion that such reasons do not fulfill the requirements for constitutional limitation as contained in Article 28J paragraph (2) of the 1945 Constitution. These matters can be prevented by formulating strict company regulations to establish high integrity amongst employees and to realize good, professional and fair working conditions.

The arguments presented by both the President and the Related Party of APINDO are principally based on the doctrine of *Pacta sunt servanda* with reference to Article 1338 of the Civil Code which states, "*All agreements made in accordance with the*

law apply as laws for those who make them. Such an agreement cannot be revoked without the further agreement of both parties or reasons determined by law. All agreements must be made in good faith", according to the Court, such arguments are not always relevant absent consideration of the standing of the parties that made the agreement. In this regard, it is clear that there is an imbalance in the standing of the employer and the employee, whereby the employee is naturally in a weaker position because they are the party in need of employment. With this unbalanced standing, the philosophy of freedom of contract, which is one of the relevant legal conditions for such an agreement, is not fulfilled. Considering this, the word "regulated" contained in the formulation of Article 153 paragraph (1) letter f of the Manpower Law does not in itself mean that the principle of freedom of contract has been fulfilled.

[3.15] Considering whereas based on all of the above considerations, the Court is of the opinion that the petition is legally grounded.

4. CONCLUSION

Based on an assessment of the facts and laws as described above, the Court concluded:

[4.1] The Court has the authority to hear the *a quo* petition;

[4.2] The Petitioners have legal standing to submit the *a quo* petition;

[4.3] The petition is legally grounded;

In accordance with the 1945 Constitution of the Republic of Indonesia, the Constitutional Court Law as amended by Act Number 8/2011 on Amendment to the Constitutional Court Law (State Gazette of the Republic of Indonesia No. 70/2011,

Supplement to the State Gazette of the Republic of Indonesia Number 5226), and Law Number 48/2009 on Judicial Powers (State Gazette of the Republic of Indonesia No. 157/2009, Supplement to the State Gazette of the Republic of Indonesia Number 5076);

5. DECISION

Decide...

1. To grant the petition in its entirety;
2. the phrase "unless otherwise regulated in an employment contract, company regulations, or a collective bargaining agreement" in Article 153 paragraph (1) letter f of Law No. 13/2003 on Manpower (State Gazette of the Republic of Indonesia No. 39/2003, Supplement to the State Gazette of the Republic of Indonesia No. 4279) contradictory to the 1945 Constitution of the Republic of Indonesia and no longer legally binding;

Order this decision to be published in the State Gazette of the Republic of Indonesia as appropriate;

This was decided at the Judicial Consultation Meeting, which was attended by seven Constitutional Justices, namely Anwar Usman as Chairperson and Member, Suhartoyo, Aswanto, Maria Farida Indrati, I Dewa Gede Palguna, Wahiduddin Adams, and Manahan MP Sitompul, respectively as Members, on Thursday, the seventh day in the month of December in the year two thousand and seventeen, and was pronounced by nine Constitutional Justices namely Arief Hidayat as Chairperson and Member, Anwar Usman, Suhartoyo, Aswanto, Maria Farida Indrati, I Dewa Gede Palguna, Wahiduddin Adams, Manahan MP Sitompul, and Saldi Isra, each as Members, accompanied by Wilma Silalahi as Substitute Registrar at the

Plenary Session of the Constitutional Court open to the public on the fourteenth day in the month of December in the year two thousand and seventeen, finishing at 12.26 WIB, attended by the Petitioners, the President or a representative, the House of Representatives or a representative, and the Related Party or a proxy.