



**JUDGMENT**

**Number 54/PUU-XIV/2016**

**FOR JUSTICE BASED ON THE ONE AND ONLY GOD**

**THE CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA**

[1.1] Adjudicating constitutional cases at the first and final instance, awards a judgment in the case of Judicial Review of Law Number 10 of 2016 regarding the Second Amendment to Law Number 1 of 2015 on Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 in the Election of Governor, Regent and Mayor Into Law against the Constitution of the Republic of Indonesia 1945, filed by:

1. **Perkumpulan Teman Ahok**, having its domicile in Perum Graha Pejaten Number 3, Jalan Pejaten Raya, RT. 013, RW. 002, Kelurahan Pasar Minggu, Kecamatan Pasar Minggu, South Jakarta City, DKI Jakarta, represented by Aditya Yogi Prabowo as Chairman of Perkumpulan Teman Ahok

as----- **Petitioner I;**

2. **Gerakan Nasional Calon Independen (GNCI)**, having its domicile in Wisma Kodel, 8th Floor, Jalan HR. Rasuna Said, Kav. B-4, South Jakarta, represented by M. Fadjroel Rachman and Saut Mangatas Sinaga,

respectively as General Chairman and General Secretary of GNCI

as----- **Petitioner II;**

- 3. Perkumpulan Kebangkitan Indonesia Baru (PKIB),**  
 having its domicile in Jalan H. Naman Number 7,  
 Pondok Kelapa, East Jakarta, represented by Reinhard  
 Parapat and Mustaghfirin, respectively as General  
 Chairman and General Secretary of Perkumpulan  
 Kebangkitan Indonesia Baru

as----- **Petitioner III;**

- 4. Tsamara Amany,** Indonesian Citizen, residing in  
 Kalibata Tengah Number 4 C, RT. 002, RW. 007,  
 Kelurahan Kalibata, Kecamatan Pancoran, South  
 Jakarta

as----- **Petitioner IV;**

- 5. Nong Darol Mahmada,** Indonesian Citizen, residing in  
 Jalan Sepat I, Number 21, RT 007, RW 002, Kelurahan  
 Kebagusan, Kecamatan Pasar Minggu, South Jakarta

as----- **Petitioner V;**

Based Special Powers of Attorney each dated June 11, 2016,  
 authorizes Andi Syafrani, S.H., MCCL.; Muhammad Ali Fernandez,  
 S.HI., M.H.; H. Irfan Zidny, S.H., S.Ag., M.Si.; Yupen Hadi,  
 S.H.; Rivaldi, S.H.; Mellisa Anggraini S.H., M.H.; Unoto Dwi  
 Yulianto, S.H., M.H., and Ade Yan Yan Hasbullah, S.H.; all are  
 Advocates/Legal Consultants and Assistant Attorneys  
 associated in ZiA & Partners Law Firm having its domicile in

Gedung Darul Marfu 3rd floor, Jalan H. Zainudin Number 43  
Radio Dalam, Gandaria Utara, Kebayoran Baru, South Jakarta,  
both collectively and individually for and on behalf of  
Principal;

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

**[1.2]** Having read the petition of the Petitioners;

Having heard the statements of the Petitioners;

Having heard and read the statements of the President;

Having heard and read the statements of the House of  
Representatives;

Having heard and read the statements of Relevant  
Parties of the General Election Commission;

Having examined the evidences of the Petitioners;

Having read the concussions of the Petitioners;

## **2. THE FACT OF THE CASE**

**[2.1]** Considering that the Petitioners filed a petition with  
application letter dated July 17, 2016 that was received in  
the Clerk Office of the Constitutional Court (hereinafter  
referred to as Clerk Office of the Court) dated June 29, 2016,  
based on Deed of Notary Receipt of Files Number  
113/PAN.MK/2016 and recorded into the Constitutional Case  
Register Number 54/PUU-XIV/2016 on July 21, 2016, which has  
been revised by petition dated August 3, 2016 and received in

the Clerk Office of the Court on August 4, 2016, which essentially described as follows:

That, the Petitioners filed a petition for Review of Article 41 paragraph (1) to the extent of **phrase** *"and included in the permanent list of eligible voters in the relevant region in the last previous general election or election in the relevant region"*, Article 41 paragraph (2) to the extent of phrase *"and included in the permanent list of eligible voters in the last previous General election or election in the relevant region"*, Article 41 paragraph (3) to the extent of phrase *"and included in the Permanent List of Eligible Voters (DPT) of previous General Election in the relevant province or Regency/City"*, Article 48 paragraph (2) letter b, Article 48 paragraph (7) and Article 48 paragraph (9) to the extent of word "not" in Law Number 10 of 2016 regarding the Second Amendment to Law Number 1 of 2015 on Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 regarding Election of Governors, Regents and Mayors to become Law" (State Gazette of the Republic of Indonesia of 2016 Number 130 and Supplement to State Gazette of the Republic of Indonesia Number 5898, hereinafter referred to as Law 10/2016) against the Constitution of the Republic of Indonesia of 1945 (hereinafter referred to as the 1945 Constitution) before the Constitutional Court;

As to the basis and the merits of the Petitioners' petition are as follows:

## **I. Authority of the Court**

1. Whereas, based on Article 24C paragraph (1) of the 1945 Constitution, Article 10 paragraph (1) letter a of Law Number 24 of 2003 regarding the Constitutional Court, as amended by Law Number 8 of 2011 regarding Amendment to Law Number 24 of 2003 on the Constitutional Court (State Gazette of the Republic of Indonesia of 2011 Number 70, Supplement to State Gazette of the Republic of Indonesia Number 5226), hereinafter referred to as Constitutional Court Law), Article 29 paragraph (1) letter a of Law Number 48 of 2009 regarding Judicial Power (State Gazette of the Republic of Indonesia of 2009 Number 157, Supplement to State Gazette of the Republic of Indonesia Number 5076), one of authorities of the Court is to adjudicate at the first and last instance whose decision is final to review the Laws against the 1945 Constitution;
2. Whereas, Article 24 paragraph (2) of the 1945 Constitution states, "*Judicial power is performed by the Supreme Court and Judicial Courts underneath it within the General Court auspice, religious Court auspice, Court martial auspice, State Administrative Court auspice, and by a Constitutional Court*" ,
3. Whereas, the object of petition filed by the Petitioners is Law Number 10 of 2016, with the provisions in the following articles:

- a. Article 41 paragraph (1) to the extent of phrase *"and included in the permanent list of eligible voters in the relevant region in the last previous general election or election in the relevant region"*,
- b. Article 41 paragraph (2) to the extent of phrase *"included in the permanent list of eligible voters in the relevant region in the last previous General election or Election in the relevant region"*;
- c. Article 41 paragraph (3) to the extent of phrase *"and included in the Permanent List of Eligible Voters (DPT) of previous General Election in the relevant province or Regency/City"*;
- d. Article 48 paragraph (2) letter b which reads, based on the Permanent List of Eligible Voters of the last General Election and List of Potential Electoral Voters from the Ministry of Home Affairs;
- e. Article 48 paragraph (7) which reads, *as to the Factual verification as referred to in paragraphs (4) (5), on the candidate's supporter who can not be met during the factual verification period, the candidate pair shall be given with opportunity to present the relevant supporters in the office of the PPS not later than 3 (three) days as of the PPS fails to meet such supporters;*
- f. Article 48 paragraph (9) to the extent of word *"not"*.

Thus the Petitioners' petition falls within one of adjudicating authorities of the Constitutional Court, namely, concerning judicially reviewing the Laws against the 1945 Constitution;

## **II. Legal Standing of the Petitioners**

4. Whereas, Article 51 paragraph (1) of Law 24/2003 together with elucidation thereon states "*Petitioner is those who deems their constitutional rights and/or authorities have been impaired by enactment of Law, namely:*

- a. Indonesian citizen individuals;*
- b. customary law community unit as long as still alive and in accordance with the development of society and the principles of the Unitary Republic of Indonesia as specified in the Legislation;*
- c. public or private legal entities;*
- d. state institutions";*

5. Whereas, further, in the Constitutional Court Judgment Number 006/PUU-III/2005 and Judgment Number 11/PUU-V/2007, 5 (five) requirements of impairment of constitutional right and/or authority as referred to in Article 51 paragraph (1) of Law 24/2003 have been defined, as follows:

- a. existence of constitutional right and/or authority of the petitioner granted by the 1945 Constitution;*

- b. the constitutional right and/or authority is deemed to have been impaired by application of the Law against which the review is applied for;
  - c. the right and/or authority must be specific and actual or at least potential in nature which, according to reasonable reasoning, can be ascertained to occur;
  - d. existence of causal relationship (*causal verband*) between the relevant impairment and the enactment of Law against which the review is applied for;
  - e. possibility that upon the acceptance of the petition, such a constitutional impairment will not occur or recur;
6. Whereas, the Petitioners consist of Legal Entities and individuals as follows:
- 1) Petitioner I, namely, Perkumpulan Teman Ahok, based on Deed Number 1 dated June 16, 2015 on Establishment of Perkumpulan Teman Ahok and based on mandate of Article 18 paragraph (1) of the Articles of Association which reads, "*the highest power in this organization is the management meeting*" and Article 24 paragraph (3) which reads, "*decision shall be made on amicable deliberation and/or majority vote basis*", in which, based on Minutes of Meeting Resolution dated June 10, 2016 being realization of the highest authority, Perkumpulan Teman Ahok amicably gives a mandate to the Chairman to



represent the interests of Perkumpulan Teman Ahok inside and outside the court, therefore Aditya Yogi Prabowo as the Chairman of the Management Board is legal and entitled to represent Perkumpulan Teman Ahok; Whereas, Perkumpulan Teman Ahok is the only vehicle to raise support for nomination of Basuki Tjahaja Purnama (Ahok) to re-nominate himself to be candidate Governor of DKI Jakarta in the 2017 election through Independent /Individual line;

Whereas, based on Article 6 paragraph (1), Perkumpulan Teman Ahok has the Vision, among other things, to *"Assemble all Jakartan residents who have the desire to make Jakarta better, orderly, humane and free of corruption in the future"*;

Whereas, based on Article 7 paragraph (1), Perkumpulan Teman Ahok has the missions, among other things, *"To accommodate aspirations of Jakartan residents to be more active in developing better Jakarta"*;

Whereas, based on Article 10 paragraph (2), Perkumpulan Teman Ahok has the scope of activities, such as, *"To establish proactive communication and cooperation among organizations and other parties in increasing support for Ahok"*;

Whereas, based on Minutes of Meeting dated June 10, 2106, it was known that those who is mandated to represent Perkumpulan Teman Ahok inside and outside the

court is the Chairman of Management Board, who is in this matter represented by Aditya Yogi Prabowo;

Whereas, since its establishment in mid-2015 until today, Perkumpulan Teman Ahok has assembled supports from DKI Jakarta Voters for re-nomination of Basuki Tjahaja Purnama to be candidate of Governor of DKI Jakarta in the Election of Governor and Vice Governor of DKI Jakarta which would be held in 2017, in which until now has collected the supports of more than one (1) million Voters. With such a numerous supports, Perkumpulan Teman Ahok was very concerned that the constitutional rights of the supporting public that have been collected shall not be harmed by the statutory regulations *in casu* the Law against which the review is applied for, in addition to assuring that the rights of Basuki Tjahaja Purnama as Prospective Candidate who would be nominated are not obstructed. Likewise, the constitutional rights of the people and the prospective candidates who would nominate themselves in the election of Regional Head and Regional Vice Head in other regions and in future, would not be impaired by the Legislation. On that basis, the Petitioner I submits this Petition;

- 2) Petitioner II, namely Gerakan Nasional Calon Independen (GNCI), is an incorporated Association that was established based on Deed Number 04 dated June 17,

2010, drawn-up by Notary Heni Herlianti, SH., and has been legalized by the Ministry of Justice and Human Rights under Number HU-170 .AH.01.06 Year 2010 dated December 20, 2010, which, based on the Court Judgment Number 60/PUU-XIII/2015 has been recognized for its existence and its legal standing by the Court. Therefore, based on this, the Petitioner II has validly had legal standing in this Application;

- 3) Petitioner III, namely, Perkumpulan Kebangkitan Indonesia Baru (PKIB), is an incorporated Association based on Deed Number 1 dated February 24, 2014 on Establishment of Perkumpulan Kebangkitan Indonesia Baru drawn-up before Notary Anita Manuela, SH., and has been legalized by the Ministry of Law and Human Right (Kemenkumham) by virtue of Decree of the Minister of Law and Human Rights Number AHU-0006055.AH.01.07.Year 2013 on Legalization of Establishment of Legal Entity Perkumpulan Kebangkitan Indonesia Baru, dated September 25, 2015, represented by its General Chairman namely Reinhard Parapat and its General Secretary namely Mustaghfirin;

Whereas, based on Article 5 paragraph (1) of the Articles of Association, PKIB has the vision *"to create a nation that has the power in the world, both from economic sector, technology, art, culture and human resources that are independent, fair, wealthy,*

*peaceful, prosperous and to educate the nation in accordance with the Pancasila and the 1945 Constitution”;*

Whereas, based on Article 5 paragraph (2) letter a of the Articles of Association, PKIB has the missions, among other things, *“to fight for the birth of legislation and various government policies that favor the poor people”;*

Whereas, based on Article 5, paragraph (2) letter g of the Articles of Association, PKIB has the missions including *“to create a fair and dignified atmosphere of democracy”;*

Whereas, PKIB as a Legal Entity has participated in the process of nomination of Candidate Pair through Individual Line, namely Faisal Basri and Biem Benjamin, in the Election Process of Governor and Vice Governor of DKI Jakarta in the 2012 Election. And, presently, it also participates, together with other public elements in overseeing the process and issues of democracy, including, but not limited to, in efforts of encouraging the candidates who are deemed having good quality and capacity to nominate themselves the Regional Head Election (Pilkada) through the individual line;

Whereas, in the practice of judicial process in Indonesia, *legal standing through organization standing*

has been accepted and recognized, based on the Court' Judgments, namely:

- a. Constitutional Court Judgment Number 060/PUU-VII/2009 on judicial review of Law Number 7 of 2004 regarding Water Resources against the 1945 Constitution;
- b. Constitutional Court Judgment Number 003/PUU-III/2005 on judicial review of Law Number 19 of 2004 regarding Stipulation of Government Regulation in Lieu of Law Number 1 of 2004 on Amendment to Law Number 41 of 1999 regarding Forestry To Become Law against the 1945 Constitution.
- c. Constitutional Court Judgment Number 001-021-022/PUU-I/2003 on judicial review of Law Number 20 of 2002 regarding Electricity against the 1945 Constitution;

Whereas, organizations that may act representing the public interests shall be organizations that meet the requirements as stipulated in various laws and Jurisprudence, namely:

- a. Incorporated as legal entity or foundation;
- b. The Articles of Association of the relevant organization states expressly the objectives of its establishment;
- c. Has carried out activities in accordance with its articles of association.

Therefore, based on the foregoing, position of the Petitioner I, Petitioner II and Petitioner III can be categorized as Legal Entity, and therefore having constitutional rights rendered by the 1945 Constitution, including to become Petitioners in the Judicial Review as referred to in Law 24/2003;

- 4) Petitioner IV, namely Tsamara Amany, is an Indonesian citizen, NIK 3174086406960005, residing in Kalibata Tengah Number 4 C, RT. 002, RW. 007, Kelurahan Kalibata, Kecamatan Pancoran, South Jakarta, DKI Jakarta, and has given personal support to the Candidacy of Basuki Tjahaja Purnama and Heru Budi Hartono to nominate themselves to be Independent Candidate Pair in the Jakarta Regional Head Election in 2017 to Perkumpulan Teman Ahok;
- 5) Petitioner V, namely Nong Darol Mahmada, is an Indonesian citizen, NIK Number 3174046303750008, and Taxpayers with Taxpayer ID Number: 24.800.253.7.412.000, residing in Jalan Sepat I, Number. 21, RT.007, RW.002, Kelurahan Kebagusan, Kecamatan Pasar Minggu, South Jakarta, DKI Jakarta, as supporter of independent candidate who has submitted a Form of support, that supports the creation of democratic climate in the regional head election in DKI Jakarta based on the democratic state of law principle;

The Petitioners IV up to V are individual citizens who have the constitutional right rendered by the 1945 Constitution that is violated or at least potentially violated by the articles that are reviewed before this Court, as will be described below. Therefore, the Petitioners are entitled to apply for Judicial Review as referred to in Law 24/2003;

7. Whereas, Article 41 paragraphs (1), (2) and (3) juncto Article 48 paragraph (2) letter b., contains the norms that essentially specifies the *cumulative requirement for Voters who may give their support to the Independent Candidate must be recorded in the DPT of the previous General Election or election in the relevant region or the List of Potential Electoral Voters (DP4)*. This norm is potentially detrimental to the constitutional rights of the Petitioners, such as, constitutional rights as referred to in Article 1 paragraph (3), Article 27 paragraph (1), Article 28D paragraph (1), Article 28D paragraph (3), Article 28I paragraph (2) of the 1945 Constitution, as specified completely in the Merits of the Petition, for the following legal reasons:

a. That, the Article 41 indicates that the Candidate for Governor/Regent/Mayor and Candidate for Vice Governor/Regent/Mayor who compete through the individual line must obtain support from the residents by a certain percentage, cumulatively, namely:

- 1) Candidate for Governor/Regent/Mayor and candidate for Vice Governor/Regent/Mayor shall obtain support from residents who have the right to vote, and;
  - 2) Residents who have the right to vote and give their support must have been registered/recorded in the Permanent List of Eligible Voters (DPT) in the general election or have voted in the last previous election in the relevant region or in the List of Potential Electoral Voters (DP4).
- b. Whereas, therefore, Candidate for Governor/Regent/Mayor and Candidate for Vice Governor/Regent/Mayor may only register themselves through individual line with support from the residents who have been the voters in the previous election or have been over 17 years old in the previous General Election;
- c. Whereas, meanwhile, there are many residents who have the right to vote for "the first time" because they are only 17 years old or newly married who desire to participate in the context of the Regional Head Election and are willing to support the Independent candidates to be Candidates for Governor/Regent/Mayor and Candidates for Vice Governor/Regent/Mayor;
- d. In addition, category of Voters who may suffer constitutional loss are Voters who migrate from one region to another and have meet the requirement of minimum time limit of 6 months or one year as required



by the legislation. With the implementation period of General Election and Regional Head Election that may exceed such a time limit, certainly the Voters who migrated and already had valid resident ID card in their new region are not registered in the previous General Election DPT or the existing DP4. Number of these migrant population in urban areas is certainly quite significant from year to year in line with the growth of the relevant city. Likewise with Voters who migrate on urbanization basis to big cities. Support given by Voters of this category to the Independent Candidates may be declared invalid because they do not meet the cumulative requirement as required by Article 41 in conjunction to Article 49 paragraph (2) letter b of the Law *a quo*. Therefore, their constitutional rights can be injured with application of norms of the articles *a quo*;

- e. Whereas, the Petitioner I whose one of its activities is to assemble supports for Candidate for Governor and Candidate for Vice Governor on behalf of Basuki Tjahaja Purnama and Heru Budi Hartono got a lot of first-time voters who later became supporters and gave her identity card for nomination of Candidate for Governor and Candidate for Vice Governor, Basuki Tjahaja Purnama and Heru Budi Hartono. Provided that the Voters who support the Candidate Pair must be recorded in the DPT

of 2014 Election, then the age of Voters who are acceptable and qualified as supporters must be older than 20 years. This is due to existence of a time span of about three years between 2014 and 2016, which means Voters who in 2014 have not been 17 years old or have married are not recorded in the DPT, and now they have been Voters because of having been qualified as Voters. Based on provisional listing, there are about over 20,000 first-time voters not recorded in the Permanent List of Eligible Voters in the 2014 General Election who are now eligible to be Voters in 2017 and have submitted the form of support for nomination of Basuki Tjahaja Purnama as candidate for governor in the Regional Head and Vice Regional Head election of DKI Jakarta 2017 that were submitted to Perkumpulan Teman Ahok. They are all threatened to lose their constitutional rights if the norm as specified in Article 41 of Law *a quo* is enacted. Not to mention the number of Voters who come from migrated population who officially have had legal domicile in DKI Jakarta area, who are certainly not recorded in the DPT of previous Election or the DP4. Thus, the Petitioner I is potentially harmed,

- f. Whereas, the Petitioners II and III as institutions that so far have been active and participated in guarding the democracy, particularly in encouraging

candidacy of independent candidates in general head elections that have been held so far throughout Indonesia also suffer losses with the application of norm of the articles *a quo*. Such articles potentially restrict the constitutional right of citizens who want to compete for leadership in their region through individual line, also preclude the constitutional rights of eligible Voters who want to support the enrolment of the best candidates of their version in the regional head election (Pilkada) to advance their respective regions;

- g. Petitioner IV is a first-time voter who has not been or is not recorded in the DPT in the previous general election. Petitioner IV personally does not know whether or not he has been recorded in the DP4 in the Dukcapil Service Office because the data is held only by the Dukcapil or by the KPU. With existence of the articles *a quo*, the Petitioner IV's right to support and nominate someone in the regional head Election of DKI Jakarta became prevented or at least potentially prevented. That, the Petitioner IV is a resident who has newly obtained the right to vote because of only will be qualified to be Voter for the Election in 2017. The Petitioner IV has given his written support and has submitted a photocopy of its ID Card (KTP) to the Petitioner I with a view of to be processed later in

time to the KPU as evidence that the Petitioner IV supports the Governor Candidate and Vice Governor Candidate, Basuki Tjahaya Purnama and Heru Budi Hartono to contest in the 2017 Regional Head Election;

h. Whereas, the Petitioner V is a Jakartan resident who supports the nomination of Basuki Tjahaya Purnama and Heru Budi Hartono as Governor Candidate and Vice Governor Candidate of DKI Jakarta through the individual line in the DKI regional head election 2017 and has submitted a Support form through Perkumpulan Teman Ahok (Petitioner I) who also feels disadvantaged with application of the articles *a quo*;

8. Whereas, Article 48 paragraph (7) and (9) contains a norm on factual verification process as follows:

(7) Factual verification as referred to in paragraphs (4) and (5), on the candidate's supporter who can not be met at the time of factual verification, the candidate pair shall be given with opportunity to present the relevant supporters in the office of PPS not later than 3 (three) days as of the PPS fails to meet such supporters;

(9) Result of the factual verification by name as referred to in paragraphs (6), (7) and (8) is not announced.

9. Whereas, Article 48 paragraph (9), shall be read together with Article 48 paragraphs (2), (3), (6), (7), and (8), so that having the following meaning:

- 1) KPU together with the independent candidate or team of independent candidates submit the required support documents to the PPS not later than 28 (twenty eight) days prior to the commencement of the registration period for factual verification.
  - 2) Factual verification shall be carried out not later than 14 days.
  - 3) Factual verification shall be carried out with census method by personally meeting each supporter of the candidates.
  - 4) In the event the candidate's supporter can not met, the candidate pair or the candidate pair team shall present the relevant candidate's supporters to the PPS office not later than 3 days as of the PPS fails to meet such supporters.
  - 5) If the candidate pair fails to present the supporters in the factual verification, then such a support for candidates shall be declared as incompliant.
  - 6) Result of the factual verification (either compliant or incompliant support) is not announced.
10. Whereas, the Petitioners feel deprived from their constitutional rights as referred to in Article 18 paragraph (5), Article 22E paragraph (1), and Article 28D paragraph (1) of the 1945 Constitution, by the norm of Article 48 paragraphs (7) and (9) for the following legal

reasons, as specified in detail in the Merits of the Petition below:

- a. Whereas, the factual verification process was carried on weekdays/in busy hours and without any prior notice. This created opportunity of no candidate's supporters found when the factual verification is carried out. It may be due to the supporters are going to school, working or other activities;
- b. Whereas, the 3 days as the time given to the Candidate Pair or their team to present their supporters is calculated within the 14 days of verification period, rather than calculated accumulatively. This means such a 3 days period to present the supporters is not an additional time, but a portion of work time within the 14 days verification period. Thus, reference to and separation of 3 days as a period to present the supporters is not a free time, but a period that is still based on the 14 days within the verification schedule. The question is what if the Voter is visited the last day of the time limit of 14 days verification time, will they be given with additional time of 3 days to present them if they cannot be met, or, since the time limit of 14 days verification period has expired, then automatically the voter will be declared ineligible? Here lies the legal problem that allow the

occurrence of loss for the Voters and the independent candidate pair they support;

- c. Whereas, the Petitioners as parties who actively raised or encouraged supports for Independent Candidate or who has participated supporting the Independent Candidate concern to know exactly who are the ineligible supporters in the factual verification to allow them making active efforts of presenting the supporters. The time given must be sufficient and give legal certainty so that the constitutional right of the Voters is not violated. By ensuring that the 14 days verification time separated from the 3 days to present the voters, thus, it can provide legal certainty for the voters to ensure Candidates pair or their team able to assist the PPS/PPL in conducting accurate factual verification and within a reasonable and clear time. Later, announcements should be made on continuously so that the active effort to present the supporters can be made immediately and to be more transparent and open;
- d. Whereas, the Petitioner I as parties who have raised the supports concerns to know exactly who are the ineligible supporters in the factual verification as part of the Petitioner I's accountability to people who have given their support to the Governor Candidate Basuki Tjahaja Purnama and Heru Budi Hartono;

- e. Whereas, the Petitioner IV and the Petitioner V have the interest that the result of factual verification is, firstly, announced; secondly, such an announcement shall be made during the verification process within 14 days rather than later; and thirdly, there is a clear difference and certainty of time between the 14-days verification period and the 3 days for summoning the supporters who can not be met in factual verification process. And, most importantly is the Petitioner IV and the Petitioner V shall be given with time to visit the PPS after such an announcement in order to provide factual verification so that the supports of the Petitioner VI and the Petitioner V can be qualified as "eligible";
- f. Whereas, in case the Petitioner IV and the Petitioner V are deemed ineligible while there is no announcement, then, this has infringed the right of the Petitioner IV and the Petitioner V in the political process that is guaranteed by the 1945 Constitution;
- g. Whereas, the Petitioner II and the Petitioner III are very concerned with the cancellation of the norm of the articles against which the review is applied for because the Petitioner II and the Petitioner III are legal entities that have actively supported, encouraged, and recruited the leader candidates in regions through Regional Head Election to be supported



to compete. And, if not obtaining support from political parties, then these candidates were encouraged to take individual line as has been conducted by the Petitioner II and the Petitioner III so far;

h. That, therefore, it is obvious and clear the existence of losses suffered by the Petitioners from the application of that provision;

11. Whereas, based on the aforesaid description, if the articles against which the review is applied for are declared contrary to or at least declared as conditionally constitutional, then the constitutional rights of the Petitioners as citizens, as referred to in Article 1 paragraph (3), Article 27 paragraph (1), Article 28D paragraph (1), Article 28D paragraph (3), Article 28 paragraph (2), Article 18 paragraph (5), and Article 22E paragraph (1) of the 1945 Constitution, will be restored, Therefore, there is a clear relationship between the loss suffered by the Petitioners (*causal verband*) and the provisions in the articles against which the review is applied for;

12. Whereas, based on the foregoing, the Petitioners have legal standing to file this petition;

### **III. The Merits of the Petition**

13. Whereas, the object of petition filed by the Petitioners is Law Number 10 of 2016, with the provisions in the following articles:

**a. Article 41:**

*(1) Independent Candidates may register themselves to be Candidate for Governor/Regent/Mayor and Candidate for Vice Governor/Regent/Mayor if fulfill the required number of supports from residents who have the right to vote and recorded in the permanent list of eligible voters in the last previous general election or election in the relevant region provided that:*

- a) Province with number of residents who are recorded in the permanent list of eligible voters up to 2,000,000, - (two million) person must be supported by at least 10% (ten percent);*
- b) Province with number of residents who are recorded in included in the permanent list of eligible voters of more than 2,000,000 (two million) persons up to 6,000,000 (six million) persons must be supported by at least 8.5% (eight and a half percent);*
- c) Province with number of residents who are recorded in included in the permanent list of eligible voters of more than 6,000,000 (six*

million) persons up to 12,000,000 (twelve million) persons must be supported by at least 7.5% (seven and a half percent);

d) Province with number of residents who are recorded in included in the permanent list of eligible voters of more than 12.000.000, - (twelve million) persons must be supported by at least 6.5% (six and a half percent);

e) Number of supports as referred to in letters a, b, c and d shall be distributed in more than 50% (fifty percent) of number of regencies/cities in the relevant province.

(2) Independent candidates may register themselves to be Regent Candidate and Vice Regent Candidate, and Mayor Candidate and Vice Mayor Candidate if fulfill the required number of supports from residents who have the right to vote and included in the permanent list of eligible voters in the relevant region in the last previous general election or the Election in the relevant region, provided that:

a. regencies/cities with number of residents who are recorded in included in the permanent list of eligible voters up to 250,000 (two hundred and fifty thousand) persons must be supported by at least 10% (ten percent);

- b. *regencies/cities with number of residents who are recorded in the permanent list of eligible voters of more than 250,000 (two hundred and fifty thousand) to 500,000 (five hundred thousand) persons must be supported by at least 8.5% (eight and a half percent);*
  - c. *regencies/cities with number of residents who are recorded in the permanent list of eligible voters of more than 500,000 (five hundred thousand) up to 1,000,000 (one million) persons must be supported by at least 7.5% (seven and a half percent);*
  - d. *regencies/cities with number of residents who are recorded in the permanent list of eligible voters of more than 1,000,000 (one million) persons must be supported by at least 6.5% (six and a half percent); and*
  - e. *Number of supports as referred to in letters a, b, c, and d shall be distributed in more than 50% (fifty percent) of number of sub-districts in the relevant regency/city.*
- (3) *Support as referred to in paragraphs (1) and (2) shall be made in the form of letter of support that is accompanied with a photocopy of Electronic Identity Card or a certificate issued by the relevant population service office and civil*

*registry certifying that the relevant resident has been domiciling within the administrative area of the region which is holding the Election for at least 1 (one) year and is recorded in the DPT of the previous General Election in the relevant province or regency/city.*

**b. Article 48:**

*(1) ... etc.;*

*(2) Administrative verification as referred to in paragraph (1) shall be carried out by means of:*

*a. ... etc.;*

*b. Based on Permanent List of Eligible Voters of the last general election and List of Potential Electoral Voters from the Ministry of Home Affairs.*

*(3) ... etc.;*

*(7) Factual verification as referred to in paragraphs (4) and (5), on the candidate's supporter who can not be met during the factual verification period, the candidate pair shall be given with opportunity to present the relevant supporters in the office of the PPS not later than 3 (three) days as of the PPS fails to meet such supporters;*

*(8) ... etc.;*

*(9) Result of the factual verification by name as referred to in paragraphs (6), (7) and (8) is not announced.*

14. Whereas, the aforesaid articles are contradictory, or at least not in conformity with the normative principle as specified in Article 1 paragraph (3), Article 27 paragraph (1), Article 28D paragraph (1), Article 28D paragraph (3), Article 28 paragraph (2), Article 18 paragraph (5), and Article 22E paragraph (1) of the 1945 Constitution, as follows:

- a. Article 1 paragraph (3), *"The State of Indonesia shall be a state based on the rule of law"*.
- b. Article 27 paragraph (1), *"All citizens shall be equal before the law and the government and shall be required to respect the law and the government, with no exceptions"*.
- c. Article 28D (1): *"Every person shall have the right of recognition, guarantees, protection and certainty before a just law, and of equal treatment before the law"*.
- d. Article 28D paragraph (3), *"Every citizen shall have the right to obtain equal opportunities in government."*.
- e. Article 28I paragraph (2), *"Every person shall have the right to be free from discriminative treatment based*

*upon any grounds whatsoever and shall have the right to protection from such discriminative treatment".*

f. Article 18 paragraph (5), "*Governors, Regents (bupati) and Mayors (walikota), respectively as head of regional government of the provinces, regencies and cities, shall be elected democratically*".

g. Article 22E paragraph (1), "*General elections shall be conducted in a direct, general, free, secret, honest, and fair manner once every five years*".

Concerning the Norm of Cumulative Requirements for Supporter Voters of Independent Candidate Obligated To Be Recorded In the DPT of previous General Election or Election Or in the DP4 as In Article 41 paragraphs (1), (2), and (3) and in Article 48 paragraph (2) letter b.

A. The Norm of Supporters of Independent Candidate Obligated To Be Recorded In the DPT of Previous Election is a Norm that is *Ex Post Facto* Or *Retroactive* in Nature That is Contradictory to the *Rechtstaat* or *Rule Of Law* principle;

15. That the Unitary Republic of Indonesia is a State of Law (*Rechtstaat*) as specified explicitly in Article 1 paragraph (3) of the 1945 Constitution;

16. That, as a state of law, Indonesia relied on all of its basis of actions, behaviors, activities and management government by law that is made by the legislators, namely the President together with the Parliament [see Article 20 paragraphs (1) and (2) the Constitution] and establishment

of the law shall be regulated in Law [see Article 22A of the Constitution] as referred to in Law Number 11 of 2012 regarding Establishment of Statutory Regulations;

17. That the conception of State of Law (*Rechtstaat*) in the Continental country system (particularly Germany) is understood in parallel with the term *Rule of Law* in the Anglo-Saxon legal system, despite of with their respective various differences and historical uniqueness as explained by Martin Krygier [*Rule of Law and Rechtsstaat*] In: James D. Wright (editor-in-chief), *International Encyclopedia of the Social & Behavioral Sciences*, 2nd edition, Vol 20. Oxford: Elsevier. pp. 780-787). In various legal discourse, both terms are understood as the main concept to distinguish it from the state that is regulated based on power of individual person (*rule by men*);
18. That, elements of the State of Law (*rechtstaat*), according to Frederich Julius Stahl, include: a) Recognition and protection of human rights; b) separation of state power is based on the *trias politica* principle; c) government by law (*wetmatigheid van bestuur*); and d) state administrative court. While the *rule of law* contains similar elements, namely: a) existence of law supremacy; b) existence of equality before the law; and c) existence of guarantee of human rights protection;
19. That, in addition, some parameters of *rule of law* have been established by several scholars, such as Lon Fuller,



Joseph Raz, John Finnis, and Neil Mac Cormick, which, according to Andrei Marmor, this provision adopt more the principle of "*Morality of Law*" of Lon Fuller (Andrei Marmor, *The Rule of Law and Its Limit, Law and Philosophy*, Vol. 23, Number 1 (Jan. 2004), pp. 1-43), namely:

- a. *Generality*: namely, legal provisions are made at a certain level of generality, does not regulate actions of each individual, individual person, or any kind of action;
- b. *Promulgation*: the law must be announced to the subject being regulated;
- c. *No retroactive rules*: the law governs prospective action;
- d. *Clarity*: the subject being regulated must understand what rules made clearly;
- e. *No contradictory rules*: shall not breach other existing rules;
- f. *No impossible prescription*: possible to be enforced;
- g. *Stability*: will not easy change;
- h. *Consistent application*: must be able to maintain conformity between actions governed and the action in the existing case, as in court judgment.

20. That the norm as specified in Article 41 paragraph (1), particularly in phrase "*and recorded in the permanent list of eligible voters in the last previous general election or election in the relevant region*" and Article 41

paragraph (2) in the phrase "*and included in the permanent list of eligible voters in the previous last general election or Election in the relevant region*", Article 41 paragraph (3) to the extent of phrase "*and included in the Permanent List of Eligible Voters (DPT) of previous General Election in the relevant province or Regency/City*", and Article 48 paragraph (2) letter b, according to the Petitioners, is a requirement that is categorized as norm which is *ex post facto* or *retroactive* in nature with the following legal reasons:

- a. That the supporting action of the voters to Independent Candidates is action that is aimed at an objective that is prospective in nature, namely to support someone who may be nominated in the next selection, election that has not taken place, but will be held with stages that are still or being ongoing or even being under planning. Concretely, action that is taken by the Petitioner I, for example, is action that is undertaken to support candidacy of Basuki Tjahaya Purnama (Ahok) to re-nominate himself in the DKI Jakarta Gubernatorial Election for the Election to be held in 2017. And all the supporting process to the independent candidate pair as specified in the Law *a quo* is intended for prospective action, rather than retrospective action;
- b. Phrase "Recorded/included in the previous Election DPT" is a norm that states action or category that is

clearly and obviously backward or an action that has occurred. This norm is clearly something that is *ex post facto* in nature, namely after the fact exists, the fact of recorded in the previous Election DPT. Phrase "previous Election" increasingly confirms the nature of *ex post facto* in the requirement of voters who are acceptable as supporters of independent candidates in the Law *a quo*;

- c. That, the *ex post facto* in the meaning of law relates to the retroactive law principle, which, according to Bryant Smith, is defined as "*all laws that make present rights and duties depend on past events*) [cited from W. David Slawson, Constitutional and Legislative Considerations in Retroactive Lawmaking, 48 California Law Review 216 (1960), p. 217]. In the context of the article being reviewed here, present (or prospective) action in question is "the supporting to independent candidate", whereas the retroactive requirement that is attached to such an action is "recorded in the previous election DPT". By definition, the provision of requirement in the article being reviewed here has fulfilled the meaning and purpose of retroactive action above;
- d. That, linguistically, the term "included" or "recorded" itself that is formulated passively by the Lawmaker in the article *a quo* has indicated the sense and contained

the meaning "which has completed" or "has been carried out", and this is increasingly compounded (tiered) with existence of phrase "*The election or the previous last election*". Denotation of past time in the phrase that is formulated by the Lawmaker in this article is not vague, but assertive and very clear, which therefore can not be interpreted else, but as written in the wordings of that article;

- e. Whereas, in addition, "*recorded/included in the DPT*" is an action that is stelsel passive nature and embracing stelsel passive. All voters are included arbitrarily by the state through the population system rather than a "free will" action that is desired by the voters themselves. The Permanent List of Eligible Voters (DPT) was made by the government Cq. The Population Service Office and Civil Registry (Dukcapil) in each region which will be submitted to the Election Organizer (cq. KPU) for recheck and to be completed if there are residents not registered yet. The free will of voters will only open and be realized if they are not registered in the DPT and they want them to be included in the DPT list with the mechanism as prescribed by the regulation, or be included into the additional DPT by the KPU, whether they desire so or not;

- f. That, with such a situation that is *ex post facto* and based on stelsel passive, certainly provision the requirements of normative requirement that is specified in this article brings a real constitutional impairment to any of voters who are eligible to be voters when the law is legalized, who were not recorded in the DPT of current Election or previous election, and who want to give their support to the independent candidate in their region. Not all eligible voters realize that they have been recorded in the DPT of previous General Election or election, moreover if they had never used their right to vote in the General Election or previous election. Moreover, for voters who have newly entered into Voter category according to Law, namely aged 17 years or married [see Article 1 paragraph (6) of Law Number 8 of 2015], who were certainly not registered in the DPT in the previous General Election or election. Thus, the this article norm has negated and given different or discriminatory treatment to the Voters based on status "*of whether or not included in the DPT of previous general election or election,*" let alone for an action that will only be carried out by the Voter in the future;
- g. Whereas, this new norm has led to a new classification or category, or even new status for Voters, namely "Voters who are included in" or "Voters who are not

included in" in the DPT of previous general election or election. This categorization is legally valid merely due to the Law is indeed authorized to set limitation on the rights of citizens by providing category or classification which certainly must be legal and based on the constitution. However, as described above, the dichotomous category that is provided by the articles against which the review is applied for here has obviously contradicted to the Constitution because it is *ex post facto* in nature or containing retroactive norm;

21. Whereas, as mentioned above, one of the elementary elements in a state that follows to the law principle, either in *rechtstaat* or *rule of law* concept, is mandatory existence of protection of human rights. Where one of its justifications as part of the protection of human rights is prohibition of law that is retroactive in nature, which, in the 1945 Constitution has been affirmed in Article 28I paragraph (1). However, that provision specifically relates only to the criminal law concept, namely "the right not to be prosecuted based on retroactive law";

22. Whereas, nevertheless, since Indonesia is a state of law, based on the *rule of law* principle as pointed out by Lon Fuller above, then it is reasonable that all kinds of law enforced must not violate any of the eight (8) principles

of *rule of law* above, The law concept shall not be retroactive, not only apply merely in the criminal law domain, as referred to in Article 28 paragraph (1) of the 1945 Constitution, but should also apply to all legislation products. The non-retroactivity principle is a universal principle that must not be violated, moreover for fundamental matters, in this case is the *right to be candidate, in casu* independent candidate, which has been affirmed by the Court in its judgments, such as, Judgment Number 5/PUU-V/2007 dated July 23, 2007 and Judgment Number 35/PUU-VIII/2010 dated December 30, 2010 as a constitutional political mechanism;

23. Whereas, since obviously the norm as included in the articles *a quo* contain retroactive element that is not in conformity with the *Rule of Law* and *State of Law* principles, then the Court should declare that Article 41 paragraph (1), particularly the phrase "*and recorded in the permanent list of eligible voters in the last previous general election or election in the relevant region*" and Article 41 paragraph (2) phrase "*and included in the permanent list of eligible voters in the previous last general election or Election in the relevant region*", Article 41 paragraph (3) to the extent of phrase "*and included in the Permanent List of Eligible Voters (DPT) of previous General Election in the relevant province or Regency/City*" and Article 48 paragraph (2) letter b are

contradictory to the Constitution, particularly Article 1 paragraph (3) of the 1945 Constitution;

B. The Norm the Independent Candidate Supporters Are Obligated to Be Registered/Included In DPT of Previous General Election/Election Is a Distinctive, Discriminatory and Unfair Norm.

24. Whereas, as stated in point Number 20 letter g above, provisions in Article 41 paragraphs (1), (2), and (3) in conjunction to Article 48 paragraph (2) letter b of the Law *a quo* has created a new category of Voters in the context of Voters who may support Independent Candidate in the Regional Head Election, namely: a) Voters who are included in the DPT; and b) Voters who are not included in the DPT; in the previous General Election/Election;

25. Whereas, classification or categorization here is not only retroactive from the time aspect, but also gives rise to something very *distinctive*, in the meaning of eliminating the status equality of citizens (Voters) in the law (*equality before the law*) which is protected by Article 27 paragraph (1) of the 1945 Constitution;

26. Whereas, this unequal treatment can be seen directly in the supporting process to Independent Candidates that is conducted by the Voters who are not included in the DPT of Previous General Election/Election as specified in Article 48 of the Law *a quo*, namely, in the administrative verification process. Administratively, initial process of



examination by KPU on the support to Independent Candidate is by checking the existence of names of the support Voters in the DPT of last general election or the List of Potential Electoral Voters/DP4 [see Article 48 paragraph (2) letter b]. If the voters are not included in the list, then automatically their supporting right were eliminated by the KPU, administratively;

27. Whereas, the elimination of constitutional right of a voter to support Independent Candidate is carried out merely on administrative basis, and merely because he/she falls within category of Voters who are not included in the DPT of previous General election/election;

28. Whereas, although the Law *a quo* expands the meaning of DPT in Article 41 by adding List of Potential Electoral Voters (DP4) in Article 48, it does not mean the rights of all voters who support the Independent Candidate have been protected entirely. There is still a space in which the Voters lose their constitutional right to support the Independent Candidate, such as, Voters who have just changed their domicile but has exceeded the time limit of 6 months or one year as required by the Law. This kind of Voters is certainly not included in the List of Potential Electoral Voters in Dukcapil Service Office, moreover if its reference is the List of Potential Electoral Voters in the year the election is held. For urban areas like the Jakarta capital city and other city areas, voters who

migrate between regions and change their Resident ID Cards (KTP) are certainly numerous and significant in number from time to time, moreover if the reference is from the year the General election is held, namely from the past 2014, until the coming 2018, the time limit of the final round of the concurrent regional head election is before the general election 2019.

29. Whereas, with contradictory-administrative categorization of Voters above, an action has been taken which made the Voters are unequal before the law, merely due to the matter of "included or not", the action of which is, once again, not on the free will of the Voters themselves, but "forced" by the population administration system, and beyond control of the Voters directly;
30. Whereas, this administratively distinctive category of voters in turn led to an effort of Voter discrimination based on certain aspects, such as, age aspect and newcomer and old settler aspect. From age aspect, with the norm as specified in the article being reviewed here, it can be said that there will be elimination of Voters aged around 17-21 years old who have joined in supporting the Independent Candidate in this year, 2016 for the regional head election 2017, because almost certainly their names are not recorded in the DPT of previous General Election/Election. Even if it is said that their names likely will be included in the List of Potential Electoral

Voters, the question is who knows and who is entitled to have that data? Is it the Voter or Dukcapil, or the KPU? Certainly, Voters were never given the List of Potential Electoral Voters (DP4), and that list was never published officially, different from DPT which might still be accessed publicly by the Voters. With such a situation, potential for Voter discrimination based on age is possible, and hence the first-time Voters are very likely to be eliminated in the support to Independent Candidate;

31. Whereas, other Voters who also potentially lose their right and therefore are discriminated against by other voters are newcomer voters who have more than six months or a year domiciling in the region which will hold the election and have changed their resident identity card (KTP) or other population identities into that region. Voters of this type are also certainly not included in the DPT in the previous general election for nomination of Independent Candidate in the Regional Head Elections of 2017 and 2018 because of latest DPT is DPT of 2014 Election. These newcomer Voters are discriminated against the old settler Voters who are already included in the DPT because of their "novelty" aspect as Voters;

32. Whereas, such an unequal treatment to Voters who are not included in the DPT of previous General Election/Election gave rise to a type of administrative discrimination. Where discriminatory action on any basis is a violation of

the Constitution as affirmed in Article 28I Paragraph (2) of the 1945 Constitution;

33. Whereas, in its further form, the aforesaid distinctive-administrative classification/categorization gave rise to issues related to sense of justice to every Voter. Voter who is not included in the DPT of previous General election/election, because automatically failing to pass the administrative verification, is discriminated for administration reason, in turn, experiencing treatment and situation of uncertainty of fair law because his/her right to support Independent Candidate is eliminated or invalidated for reason that he/she does not know directly (because those who hold the DPT and the List of Potential Electoral Voters are the KPU and the Dukcapil only) and never taken any action before (because he/she never registered him-/herself as voters in the DPT or the List of Potential Electoral Voters). The both reasons for eliminating the supporting right of a Voter to Independent Candidate negated based on Law where this is completely unrelated to anything he/she did by him-/herself. This means that this norm "handcuffs" the political right in a Voter with an obligation that is not inherent in him/her, but beyond his/her self-capacity. In condition beyond self-capacity and action of a Voter in the past, he/she must be bound to action he/she is doing now, is a position of serious injustice. It is unfair because someone may

simply lose his/her right by something that is not his/her action. And such an injustice in the "past" must not become a law or norm that binds someone in the "present", because according to the universal law principle, "law must not arise from injustice condition" (*lex non oritur ex injuria*). And this is clearly contradictory to Article 28D paragraph (1) of the 1945 Constitution which guarantees every citizen shall receive certainty before a just law, and equal treatment before the law;

34. Whereas, based on the aforesaid description, obviously the norm included in Article 41 and Article 48 paragraph (2) letter b of the Law *a quo* contains element of unequal treatment before the law, creating discrimination, and creating injustice, thus, the Court should declare the Article 41 paragraph (1), particularly the phrase "*and recorded in the permanent list of eligible voters in the last previous general election or election in the relevant region*" and Article 41 paragraph (2) phrase "*and included in the permanent list of eligible voters in the previous last general election or Election in the relevant region*", Article 41 paragraph (3) to the extent of phrase "*and included in the Permanent List of Eligible Voters (DPT) of previous General Election in the relevant province or Regency/City*" and Article 48 paragraph (2) letter b contradict to the Constitution, particularly Article 27

paragraph (1), Article 28I paragraph (2), Article 28D paragraph (1) of the 1945 Constitution;

C. The Norm that the Supporter of Independent Candidate Is Obligated To Be Recorded In the DPT of Previous General Election/Election Is an Excessive and Disproportionate Interpretation By the Lawmakers Of Constitutional Court Judgment Number 60/PUU-XIII/2015 To Make the Independent Candidates Encounter Difficulty.

35. Whereas, the norm as included in Article being reviewed here is the norm that is resulted from excessive or disproportionate interpretation by lawmakers of the norm that is included in the Court Judgment Number 60/PUU-XIII/2015 that is deliberately intended to increasingly discourage the enrolment of independent candidates in the regional head election, which in turn can lead to the loss of right of every citizen, in this case the independent candidate, to obtain equal opportunity in the government, as referred to in Article 28D paragraph (3) of the 1945 Constitution;

36. Whereas, in the judgment *a quo*, the Court only provided a constitutional interpretation relating to the provision regarding percentage of independent candidates support that refers to number of DPT, as confirmed by the Court in that Judgment as follows:

"[3.15.4] That, based on consideration in subparagraphs [3.15.1] through [3.15.3] above, for fair

legal certainty as well as fulfilling the equality before the law principle and not to preclude the right to obtain equal opportunity in the government, the Court is of the opinion that the calculation basis to determine support percentage for citizen who intends to register his-/herself to be regional head and vice regional head must use number of population who have had the right to vote which, in this case, is represented in the permanent list of prospective eligible voters in each of relevant regions. Permanent list of prospective eligible voters in this regard means the permanent list of prospective eligible voters in the previous General Election;

[3.15.5] that, therefore, the Court is of the opinion, Article 41 paragraphs (1) and (2) of Law 8/2015 is conditionally unconstitutional to the extent not construed that the calculation basis of support percentage for individual candidates who intends to register his-/herself to be regional head and vice regional head (Governor, Vice Governor, Regent, Vice Regent, Mayor and Vice Mayor) is referring to the permanent list of eligible voters of previous General Election. In other words, in order to be constitutional, provisions of Article 41 paragraphs (1) and (2) of Law 8/2015 that relies on support percentage of individual who intends to

*enroll him-/herself to be candidate for regional head and vice regional head that uses the size of population must be interpreted by using the size of population who have had the right to vote as included in the permanent list of prospective eligible voters in each of relevant regions in the previous General Election;*

37. Whereas, based on the aforesaid legal opinion of the Court, explicitly and in verbatim, the norm as contained norm as included in the Judgment *a quo* is "size of population who have had the right to vote" rather than "number of residents" as specified in the norm of articles that are being reviewed here. Inclusion of phrase "and included" or "recorded" in Article 41 paragraphs (1), paragraph (2), paragraph (3) in conjunction to Article 48 paragraph (2) letter b in the Law *a quo* is, therefore, the will of lawmakers that is not in line and not consistent with the judgment *a quo*, who has a separate intension and not in conformity with the Constitution as the Petitioner has described above;

38. Whereas, the inclusion of phrase "and included" or "recorded" has an impact that is legally very serious on Independent Candidate who has worked since long ago, even since this Law has not been enacted and amended. Namely, impact on decrease in number of support of those who have submitted photocopies of electronic ID Cards and their



support letter to the independent candidate, and exceptional technical impact in the collective work of the Independent Candidate together with his team to re-select, who and how many are their supporters who are not included in the DPT of previous General Election/election. In fact, the time available is very short and limited, because the Constitution *a quo* was legalized and promulgated only less than 2 (two) months prior to submission of Independent Candidate support requirement to the KPU, assuming the submission period of Independent Candidate support requirement is until August 2016, for concurrent regional head election 2017. Thus, almost certainly there will be very much Independent candidates failing to register or enroll for the next Concurrent Regional Head Election 2017 due to additional requirements included in the provision of Article 41 paragraph (1), paragraph (2), paragraph (3) in conjunction to Article 48 paragraph (2) letter b of this amended Law *a quo*;

39. Whereas, the normative requirement in the phrase "and included/recorded in the DPT" reduces and injures the constitutional consideration that is always used by the Court in various judgments, particularly relating to Independent Candidate issue, which alerts on the importance of democracy principle with the widest involvement of the people in the political process, not only in the *right to vote* but also participation in

exercising their right to be elected or to enroll themselves in the election process (*right to be candidate*), as concrete manifestation of deliberative democracy in this country. This was confirmed by the Court in the Judgment Number 60/PUU-XIII/2015, dated September 29, 2015, on page 69 as follows:

*"... Widest involvement of people is ideal manifestation of democracy that, actually, it is the people who have made decision regarding what is the best to be applied to themselves. Widest participation of the people is measured not merely from how much is people's involvement (who have had the right to vote) in using their right to vote (right to vote) but also from their participation in using their right to be elected or to nominate themselves in the electoral process (right to be candidate). This is one of manifestations or forms of deliberative democracy that is frequently applied in various countries, the purpose of which is to complement the shortage that occurs in the representative democracy model, particularly its tendency to be elitist ..."*

Referring to the aforesaid consideration of the Court, the addition of phrase "included/recorded in the permanent list of eligible voters" in the articles *a quo* that directly influences and significantly affects on decrease in number of voters who have given or will give their support to the Independent Candidates who will enroll

themselves, particularly in the concurrent regional head election 2017, for which the supporting file submission was commenced around this August 2016, has deviated from the constitutional goal as outlined by the Court relating to the Independent Candidate, namely to encourage and increase people's participation in exercising their right to be elected or to enroll themselves in the election (*right to be candidate*). In spite of expanding the participation room, this new norm in Article 41 that has ever been *reviewed by the* Court and Article 48 paragraph (2) letter b is even increasingly narrowed in its norm and meaning in the framework of growing up the people's participation, by classifying the Voters into two classifications as described above: included and not included in the DPT;

40. Whereas, the norm of the articles *a quo* also automatically affect on elimination of constitutional right of Independent Candidate who is supported by their supporter voters to obtain equal opportunity in the government as referred to in Article 28D paragraph (3) of the 1945 Constitution. When voters who support Independent Candidate are precluded from exercising their right, then reciprocally those who also be disadvantaged at the Independent Candidate they support. Elimination of right of voters who are not included in the DPT of previous General election to support independent candidate directly

correlates with the loss of the candidate's right to obtain equal opportunity in government. In fact, one of constitutional reasons given by the Court in determination of legality of independent candidates in the regional head election is the right of every individual to be selected in order to obtain equal opportunity in the government. In addition, this right is also intended as "middle way" to strengthen procedural and deliberative democracy through Election to keep the political parties able to improve themselves and correct their existence as a democracy pillar by creating a new contestation room, in addition to fellow political parties in the Regional head election;

41. Whereas, since obviously the norm that is included in the articles *a quo* contains a norm that departs and deviates from the norm in the Court Judgment Number 60/PUU-XIII/2015 and limits the right of a person to have the equal opportunity in the government, then the Court should declare the Article 41 paragraph (1), particularly the phrase "and recorded in the permanent list of eligible voters in the last previous general election or election in the relevant region" and Article 41 paragraph (2) phrase "and included in the permanent list of eligible voters in the previous last general election or Election in the relevant region", Article 41 paragraph (3) to the extent of phrase "*and included in the Permanent List of Eligible Voters (DPT) of previous General Election in the*

*relevant province or Regency/City*”, and Article 48 paragraph (2) letter b contradict to the Constitution, particularly Article 28D paragraph (3) of the 1945 Constitution;

Regarding Factual Verification In Article 48 paragraphs (3b) and (3d)

D. The provisions “3 Days as of the PPS Fails To Meet Such Supporters” and “Not Announced” In the Factual Verification Creates Regional Head Election That Is Not Democratic And Not Luber And Jurdil

42. Article 18 paragraph (4) of the 1945 Constitution has expressly stated that *“Governors, Regents and Mayors each of head of regional government of the provinces, regencies, and cities shall be elected democratically”*;

43. Whereas, the phrase *elected democratically* indicates that the principles and elements of democracy must be realized in each series of election process of regional heads and their vices, both before, during and after the regional head Election;

44. Whereas, democracy always requires method, namely existence of institutional procedure to achieve political decisions in which individuals acquire the power to make decisions through competitive struggle in order to gain the people’s votes (Huntington, 1984; 1993). Still according to Huntington, direct General election or election is the way democracy works;

45. Whereas, General election as mandated by the Constitution must be implemented on *Luber* and *Jurdil* basis, as defined in Article 22E paragraph (1). Although which is meant by that article is General Election for Presidential Election and Legislative Election as referred to in Article 22E paragraph (2), but regional head Election as a type of direct Election, also adheres to the same principles as expressed in Article 2 of Law Number 1/2015. Moreover, *Luber* and *Jurdil* principle can not be separated from Regional head election, although not referred to as General Election according to Article 22E paragraphs (1) and (2) of the 1945 Constitution, because the Regional Head Election as mandated by the constitution must be carried out democratically. By adopting direct regional head election that must be held democratically, automatically the *Luber* and *Jurdil* principle becomes something inseparable in the regional head Election, because the *Luber* and *Jurdil* principle is one indicators used to measure whether a direct election is democratic or not. On that basis, this principle is also included as inherent principle in the Regional head election as specified in Article 2 of Law Number 1/2015;
46. Whereas, according to Guy S. Goodwin-Gill, in the book *Free and Fair Elections: International Law and Practices* based on Inter-Parliamentary Union (IPU) agreement in Geneva in 1994 stated that there are ten series in the

general election/Election process that become a touchstone of whether an election is democratic or not. They are: (1) Electoral System and Law; 2) Restrictions constituency; 3) Management of General election; 4) Right to choose; 5) Registration of voters; 6) Civic education and information to voters; 7) Candidates, parties and political organizations, including the funding; 8) General Election campaign, including protection and respect of human rights, political meetings and media access and coverage; 9) Balloting, monitoring and election results; 10) complaint resolution and dispute settlement. These ten indicators are made the basis to measure whether an election is *Luber* and *Jurdil* or not.

47. Whereas, based on the foregoing, the *Luber* and *Jurdil* principle in direct Election is inseparable from and even become an integral part of democratic principle in a direct Election. In short, direct election can be stated democratic if carried out by applying the *Luber* and *Jurdil* principle, and, on contrary, if the *Luber* and *Jurdil* principle has been implemented, then, such an Election can stated as Election that runs democratically;

48. Whereas, one of *Luber* and *Jurdil* or democratic Election indicators ate as in point number 6 in the 46<sup>th</sup> paragraph above is "Information to voters". Where the information as meant here is certainly is information that generally relates to the voter's right in order to exercise their

right to vote, including *in casu* in the process of exercising their right to support independent candidates who have been declared as constitutional by the Court;

49. Whereas, provisions in Article 48 paragraph (7) of the Law as described here, according to the Petitioners, has violated or at least potentially contradict to the constitutional norm above, in addition to violating the norms of providing fair legal certainty, for the following legal reasons:

a. Whereas, the provisions in Article 48 paragraph (7), which specifies a time of at least 3 days for candidate pairs to present their supporters since the PPS unable to meet the supporters, applies within the span of 14 days of factual verification period as referred to in Article 48 paragraph (3). This can be understood from the phrase "since the PPS unable to meet the supporters" meaning a period of 3 days within the supporter finding period within a period of scheduled 14-day period. Likewise, the practice so far that is applicable as specified in PKPU Number 9/2015;

b. Whereas, as to the series of factual verification process for 14 days that was conducted by PPS/PPL in the field, none knew its schedule in detail about whom to be meet or which supporters were sought to be met, but the PPS/PPL themselves. For example, a PPL in a RW in a Sub-District/Village was assigned to verify 50



persons for the verification period of 14 days. Thus, determination of who will be met first or later is the authority or the will of the officer himself. Voters did not know the exact schedule of when the PPL/PPS officer would come to see him within such a 14 days period;

- c. Whereas, by incorporating period of 3 days to present the supporter voter within 14 days of factual verification period has resulted in some problems that led to the loss of information to the Voter or at least has closed the room for the Voter to actively and participatively check his support in the factual verification phase. Namely: 1) If until the end of 14 days factual verification period, the Candidate Pair, Candidate Pair Team, or their supporter voter were no longer able to defend their right to ensure their support. Whereas, for example, a voter had been waiting for arrival of the PPL/PPS officer until the last day, because he did not know when he would be visited. In fact, until the last day, he was not visited by the officer. Such a awaiting of supporter voter was useless because after the lapse of 14 days period, his support was declared unqualified. Active efforts to defend this supporting right lies on the Candidate Pair at the time of PPS/PPK/KPU Plenary, and highly depends on good and smooth communication between the supporters of the

Candidate Pair team. 2) Even if the supporting voter actively visited the PPS Office within the 14 days period of factual verification, he found that the officer who was in charge of verification on him was being on duty to verify another supporter, thus, certainly such an active action of this supporter is fruitless because, for example, he meet another officer in the PPS Office, will the other officer be entitled to verify such a supporter who appears while his support files are held by the officer who is being on filed-duty?

- d. Whereas, various technical issues will arise and can occur in the field in the factual verification process due to various factors and reasons. *Arrangement of this technical issue actually should not be made and included in an Law, but will be sufficient if specified in the KPU technical regulation, which allows flexibility of implementation in the filed in accordance with condition and circumstance of the region that is very different between one and others in this country of plurality.* Because, in accordance with the *generality* principle in the *rule of law* according to Lon Fuller above, norm of a Law should be in general aspect, rather than in technical detail. However, since this technical arrangement has been put by the lawmakers in a separate article, then, legal

complication relating to implementation of this norm became serious and must be considered specifically in the constitutional consideration so that no violation of law will occur;

- e. Whereas, therefore, in order to provide better, fair, and exact information to the voters as implementation of the *Luber* and *Jurdil* principle concerning the timing of 3 days to present this Voter in the factual verification process, then, this limiting provision of 3 days in Article 48 paragraph (7) should be interpreted as 3 days as of the time limit of 14 days of factual verification as referred to in Article 48 paragraph (3) expires. This means the factual verification shall be carried out with the detail of period 14 days plus 3 day of period to present the supporters after the initial factual verification period ends. Thus, there are some benefit aspects in this two phase election separately in two different times: 1) Candidate Pair , Candidate Pair Team, or Supporter Voters get certainty and can manage the time properly. Namely, if after the scheduled period of 14 days apparently that the supporter is not visited by the PPL/PPS officer then he or his team can actively encourage participation of his supporter to come to the PPS Office to check directly and actively. 2) This will also greatly useful for the PPL/PPS field officer to

obtain the certainty of time waiting for the Candidate Pair team together with his supporter or the supporter of Candidate Pair themselves in the PPS office during 3 days consecutively. 3) Process and efforts to encourage active participation of the supporter escorting his support can be created due to availability of clear and exact space and time for them to visit the PPS Office with in 3 days as of the 14 days period of field factual verification. And finally, 4) The firmness and certainty of factual verification phase distinction is created, namely direct factual verification in the field by visiting residences of the supporting voters directly, and factual verification at the PPS Office by method of waiting for arrival of or visited by the supporting Voters assisted by the independent Candidate Pair Team;

f. Whereas, based on the aforesaid legal arguments, legally to declare Article 48 paragraph (7) is unconstitutional to the extent not construed as "Not later than 3 (three) days as of the 14 day period as referred to in Article 48 paragraph (3) expires";

50. Whereas, the provision in Article 48 paragraph (9), which regulates factual verification by name not announced violates the *Luber* and *Jurdil* principle and the democratic principle in Direct Election based on the following legal reasons:

- a. That since the beginning when the independent candidate declares his intention to compete and register in the Regional Head election, this is conducted openly to the public to know. Further, as part of that process, also openly, independent candidates raised and collected support from the Voters in their respective region to fulfill the requirement as established by the Law and regulations;
- b. That in such a support verification process, the Election Organizer also does so openly, namely by census method as referred to in Article 48 paragraph (6). The Census was certainly carried out openly by involving many people as officers, even also involving elements of apparatus or institution of citizens such as RT, RW, and even Sub-District Heads and village Heads. Since in PKPU Number 9 of 2015, for example, specified that one of legalization models conducted by the PPL/PPS officers must obtain signature and seal of the sub-district or village office. With the census model that visits directly the supporter voters to their respective residence, openness in this process is a certainty and unavoidable;
- c. That, because since the beginning, the supporting process to the independent candidates is a public action and conducted publicly either by the candidates, their team, or his their, thus, it becomes peculiar and

impressively there is something concealed, if later, at the final stage this process is conducted closely, namely not announced. There is no explanation in this Law on what is meant by announcement, thus, the provision of non announcement emerges. Even, numbering of this paragraph in the Elucidation on Law can not be found, let alone the content of elucidation. Thus, an impression arises that this paragraph emerged later and offhandedly, hence its numbering is absent in the section of Elucidation on Law;

- d. That, even if this norm is intended with the aim to avoid the potential social conflict within the community due to matter of difference of political choice in the Regional head election, then the question is, after some years of Regional head election implementation since the Court issued a ruling that allows nomination of independent candidates, did social conflict occur due to this problem? Even in fact, many independent candidate pairs won the Regional head election within recent several years, even in the concurrent Regional head election 2015, there were 8 (eight) regional heads and vice regional heads won over by Independent Candidate Pairs. The question later is, was there conflict in the 8 regions in the past 2015?;
- e. That explicitly and clearly, the provision in this Article 48 paragraph (9) has injured the *Luber* and

*Jurdil* principle, particularly a part in the disclosure aspect of the voters, both for Candidate Pairs, Candidate Pair Team, and the Voters themselves that potential result in their constitutional loss because it event potentially creates room a political dealing room between the PPL/CO Officers and Candidate Pair Team or independent Candidate Pair;

- f. That the technical problem that arose is, is it is announced, what model and type and method of announcement should be made by the KPU pertaining to this factual verification result? Of course, this is returned to the Election Organizer with due regard to transparency, effectiveness, and efficiency principles in the announcement. Really, since relating to a relatively technical rule, then this rule was not put directly into Law, but simply in the KPU Regulation. Even the presence or absence of this provision is up to the KPU to determine and regulate. Because, in accordance with the generality principle in the *rule of law* according to Lon Fuller above, norm of an Law should be simply on general aspect, not technically detail. However, since this provision has already been included in Law, the Petitioners feels concerned to consider it and review it constitutionally through the Court so that the public interest relating to this can

be considered more broadly with constitutional norm parameters;

- g. That, since the provision in Article 48 paragraph (9), particularly to the extent of word "not" announced, violates the *Luber* and *Jurdil* principle and the democratic principle in a direct election that is guaranteed by the Constitution, thus, it is reasonable that the word "not" in that provision is declared unconstitutional by the Court;

E. Request for Quick Examination and Verdict

51. Whereas, based on initial Draft Regulation of KPU regarding Stages of Implementation of Concurrent Regional head Election 2017 that was made by KPU, registration of independent candidate pair was scheduled to commence in early August 2016. It means only about less than two months since the Law against which the review is applied for was legalized. Concurrently, the independent candidate pair who want to register himself in the Concurrent Regional Head Election 2017 that would be held in 101 Regencies/Cities and in all Provinces throughout Indonesia have long ago been preparing the files and evidences of support, with reference to the previous statutory regulations, prior to emergence of the new norms in this new second amendment to Law Number 1/2015. The emergence of new norms that are reviewed in this Petition is certainly very influential and potentially harms the



Voters and the candidate pairs who have worked to exercise their constitutional right in the Regional Head Election, if the Court does not immediately decide the constitutionality of norms in the articles being reviewed here;

52. Whereas, therefore, in view of the urgency of the application of norms being reviewed related to with the stages and schedule of the regional head election 2017 that was about to begin in August 2016, the Petitioners request the Court to adjudicate and decide the Petition quickly, before the citation of in the articles *a quo* by the KPU to allow the Petitioners' constitutional right can be protected and this petition is valuable and useful to protect the constitutional right of the Petitioners and the Voters and the independent candidates in the Regional Head Election 2017;

#### **IV. Petition**

That, based on the aforesaid description, reasons, and facts, the Petitioners request the Panel of Judges of the Constitutional Court to decide:

1. Grant the Petitioners' petition in its entirety;
2. Declaring the Article 41 paragraph (1) of Law Number 10 of 2016 (State Gazette of the Republic of Indonesia of 2016 Number 130, Supplement to State Gazette of the Republic of Indonesia Number 5898) to the extent of phrase "and

*recorded in the permanent list of eligible voters in the last previous general election or election in the relevant region"*, contradicts to the 1945 Constitution and has no binding legal force.

3. Declaring the Article 41 paragraph (2) of Law Number 10 of 2016 (State Gazette of the Republic of Indonesia of 2016 Number 130, Supplement to State Gazette of the Republic of Indonesia Number 5898) to the extent of phrase *"included in the permanent list of eligible voters in general election in the relevant region or the last previous election in the relevant region"*, contradicts to the 1945 Constitution and has no binding legal force;
4. Declaring the Article 41 paragraph (3) of Law Number 10 of 2016 (State Gazette of the Republic of Indonesia of 2016 Number 130, Supplement to State Gazette of the Republic of Indonesia Number 5898) to the extent of phrase *"and included in the Permanent List of Eligible Voters (DPT) of previous General Election in the relevant province or Regency/City"*, contradicts to the 1945 Constitution and has no binding legal force.
5. Declaring the Article 48 paragraph (2) letter b Law Number 10 of 2016 (State Gazette of the Republic of Indonesia of 2016 Number 130, Supplement to State Gazette of the Republic of Indonesia Number 5898) which reads *"based on the Permanent List of Eligible Voters of the last general election and List of Potential Electoral Voters from the*

*Ministry of Home Affairs.*”, contradicts to the 1945 Constitution and has no binding legal force.

6. Declaring the Article 48 paragraph (7) of Law Number 10 of 2016 (State Gazette of the Republic of Indonesia of 2016 Number 130, Supplement to State Gazette of the Republic of Indonesia Number 5898) to the extent of phrase “*not later than 3 (three) days as of the PPS fails to meet such supporters*”, contradicts to the 1945 Constitution and has no binding legal force to the extent not construed as “not later than 3 (three) days as of the 14 days period as referred to in Article 48 paragraph (3) lapses”.
7. Declaring the Article 48 paragraph (9) of Law Number 10 of 2016 (State Gazette of the Republic of Indonesia of 2016 Number 130, Supplement to State Gazette of the Republic of Indonesia Number 5898) to the extent of word “not”, contradicts to the 1945 Constitution and has no binding legal force;
8. Ordering publication of this judgment by placing it in the Official Gazette of the Republic of Indonesia accordingly.

Or, if the Panel of Judges of the Constitutional Court opines otherwise, we request for judgment in justice and fairness (*ex aequo et bono*).

**[2.2]** Considering that, in order to support their arguments, the Petitioners submit documentary/written evidences marked exhibit P-1 up to exhibit P-23 as follows:

1. Exhibit P-1 : Photocopy of Law Number 10 of 2016 regarding Second Amendment to Law Number 1 of 2015 on Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 regarding Election of Governors, Regents And Mayors to become Law;
2. Exhibit P-2 : Photocopy of Articles of Association of Perkumpulan Teman Ahok Number 1 dated June 16, 2015, before Notary Dian Lestari Dewi, SH;
3. Exhibit P-3 : Photocopy of Letter Number 151/5:16/31.74.04.1001/-1.711.53/2015 regarding Domicile of Perkumpulan Teman Ahok Organization, dated September 21, 2015;
4. Exhibit P-4 : Photocopy of Letter Number S-18139KT/WPJ.04/KP.1003/2015 Regarding Certificate of Registered Status (Perkumpulan Teman Ahok), dated October 6, 2015;
5. Exhibit P-5 : Photocopy of Decree of the Minister of Law and Human Rights Number of 2015 regarding Legalization of Articles of Association of Perkumpulan Teman Ahok, dated October 11, 2015;

6. Exhibit P-6 : Photocopy of Taxpayer Identification Number (TIN) Number 74.125.238.1-017.000 in the name of Perkumpulan Teman Ahok.
7. Exhibit P-7 : Photocopy of Resident Identity Card (KTP) with Personnel Registration Number 3171040801910003 in the name of Aditya Yogi Prabowo;
8. Exhibit P-8 : Photocopy of Resident Identity Card (KTP) with Personnel Registration Number 3173062210930008 in the name of Singgih Widiyastono;
9. Exhibit P-9 : Photocopy of Resident Identity Card (KTP) with Personnel Registration Number 340,416,601,920,002 in the name of Amalia Ayuningtyas;
10. Exhibit P-10 : Minutes of Meeting of Perkumpulan Ahok, dated June 19, 2015;
11. Exhibit P-11 : Minutes of Meeting dated June 10, 2016;
12. Exhibit P-12 : Photocopy of Decree of the Minister of Law and Human Rights Number AHU-170-.AH.01.06.Tahun 2010, on Legalization of Articles of Association of Perkumpulan Gerakan Nasional Calon Independen, dated December 20, 2010;

13. Exhibit P-13 : Photocopy of Articles of Association of Perkumpulan Gerakan Nasional Calon Independen Number 4, dated June 17, 2010;
14. Exhibit P-14 : Photocopy of Resident Identity Card (KTP) with Personnel Registration Number 3273221701640004 in the name Moch. Fadjroel Rahman. SE., MH;
15. Exhibit P-15 : Photocopy of Resident Identity Card (KTP) with Personnel Registration Number 3171082711780001 in the name of Saut Mangatas Sinaga;
16. P-16 : Photocopy of Decree of the Minister of Law and Human Rights Number AHU-0006055.AH.01.07.Tahun 2015 regarding Legalization of Legal Entity Perkumpulan Kebangkitan Indonesia Baru (PKIB), dated September 25, 2015;
17. Exhibit P-17 : Photocopy of Articles of Association of Perkumpulan Kebangkitan Indonesia Baru Number 1 dated February 24, 2014, before the Notary Anita Manuella, SH;
18. Exhibit P-18 : Photocopy of Resident Identity Card (KTP) with Personnel Registration Number 3174022101720005 in the name of Reinhard Parapat;

19. Exhibit P-19 : Photocopy of Resident Identity Card (KTP) with Personnel Registration Number 3174046303750008 in the name of Nong Darol Mahmada;
20. Exhibit P-20 : Photocopy of Taxpayer Identification Number (TIN) 24.800.253.7-412.000 in the name of Nong Darol Mahmada;
21. Exhibit P-21 : Form of Support to Prospective Candidate of Jakarta Governor Basuki Tjahaja Purnama and Vice Candidate for Governor Heru Budi Hartono in the name of Nong Darol Mahmada;
22. Exhibit P-22 : Photocopy of Resident Identity Card (KTP) with Personnel Registration Number 3174086406960005 in the name of Tsamara Amany;
23. Exhibit P-23 : Photocopy of Form of Support to Prospective Candidate of Jakarta Governor Basuki Tjahaja Purnama and Vice Candidate for Governor Heru Budi Hartono in the name of Tsamara Amany;

**[2.3]** Considering that the House of Representatives in its meeting on September 5, 2016 gave its verbal statement and written statement that was received at the Clerk Office of the

Court on October 19, 2016 which essentially brought forward as follows:

As to the arguments of the Petitioners as described in the petition *a quo*, the House, in expressing its view, firstly described the legal standing, as can be explained below:

**1. Legal standing of the Petitioners.**

Qualification that must be fulfilled by the Petitioners as a party has been stipulated in the provision of Article 51 paragraph (1) of Law Number 24 of 2003 in conjunction to Law Number 8 of 2011 regarding the Constitutional Court (hereinafter referred to as Law on Constitutional Court), which states that "*Petitioner is those who deems their constitutional rights and/or authorities have been impaired by enactment of Law, namely:*

- a. Indonesian citizen individuals;*
- b. customary law community unit as long as still alive and in accordance with the development of society and the principles of the Unitary Republic of Indonesia as specified in the Legislation;*
- c. public or private legal entities; or*
- d. state institutions."*

Constitutional right and/or authority as referred to in the provision of Article 51 paragraph (1) is reaffirmed in its elucidation, that "'constitutional rights" mean the rights that are specified in the Constitution of the Republic of Indonesia Year 1945." Provisions in the Elucidation on Article



51 paragraph (1) reaffirms that only rights that are explicitly specified in the 1945 Constitution shall be categorized as "constitutional rights";

Therefore, according to Law on the Constitutional Court, for a person or a party is acceptable to be Petitioner who has legal standing in the petition for judicial review against the 1945 Constitution, they must first explain and prove:

- a. Their qualification as Petitioner in the petition *a quo* as referred to in Article 51 paragraph (1) of Law on the Constitutional Court;
- b. Their constitutional rights and/or authorities as referred to in the Elucidation of Article 51 paragraph (1) of Law on the Constitutional Court that are deemed to have been impaired by enactment of the Law *a quo*.
- c. Impairment of constitutional rights and/or authorities of the Petitioners as a result of enactment of Law against which the review is applied for.

Regarding definition of constitutional loss, the Constitutional Court has given meaning and definition of constitutional loss arising from enactment of a Law must fulfill 5 (five) Criteria (see Judgments Number 006/PUU-III/2005 and Number 011/PUU-V/2007), namely, as follows:

- a. existence of constitutional right and/or authority of the petitioner granted by the 1945 Constitution;

- b. that the constitutional right and/or authority is deemed to have been impaired by application of the Law against which the review is applied for;
- c. Such an Impairment of constitutional rights and/or authorities of the Petitioners is specific and actual or at least potential in nature which, according to reasonable reasoning, can be ascertained to occur;
- d. existence of causal relationship (*causal verband*) between the relevant impairment and the enactment of Law against which the review is applied for;
- e. possibility that upon the acceptance of the petition, such a constitutional impairment will not occur or recur;

If these five conditions are not met by the Petitioners in the case of judicial review of law *a quo*, then the Petitioners have no qualification of legal standing as Petitioner. Responding to the Petitioner's petition *a quo*, the House of Representatives views that the Petitioners must be able to prove first whether the Petitioners are party who deem their constitutional rights and/or authorities have been impaired by application of the provisions against which the review is applied for, particularly in construing existence of impairment of their rights and/or authorities as a result of enactment of the provisions against which the review is applied for;

As to the arguments brought forward by the Petitioners *a quo*, the House of Representatives views that the Petitioners

have no legal standing because of not complying with the provisions in Article 51 paragraph (1) and the Elucidation of Law on the Constitutional Court, and not meeting the requirements of constitutional impairment as decided in the previous judgment of the Constitutional Court. That the Petitioners in the petition *a quo* did not describe concretely their constitutional rights and/or authorities that they deem impaired by enactment of the provisions against which the review is applied for, particularly in construing their constitutional rights and/or authorities that are impaired by enactment of the provisions against which the review is applied for;

Based on the aforesaid description, as to the legal standing of the Petitioners, the House of Representatives passes it completely to Your Honour Chairman/ Panel of Judges of the Constitutional Court to consider and assess whether the Petitioners have legal standing as specified in Article 51 paragraph (1) of Law on the Constitutional Court and the Constitutional Court Judgment Number 006/PUU-III/2005 and the Judgment Number 011/PUU-V/2007 regarding parameters of constitutional impairment;

**2. Judicial Review on Article 41 paragraphs (1), (2), (3) and Article 48 paragraph (2) letter b, Article 48 paragraph (7), and Article 48 paragraph (9) of Law Number 10 of 2016 against the 1945 Constitution.**

- (1) That, Article 1 paragraph (2) of the 1945 Constitution mandates, "sovereignty rests with the people and shall be implemented in accordance with the Constitution. It means, the Constitution is the highest source of written law in the legislation hierarchy which becomes the source of law for any state regulator in performing their functions, duties, and authorities in the national and state life. That, the House of Representatives under the 1945 Constitution is a state institution which is representation of the people, that is given with power to establish Laws. In a line with the conception of Indonesian state of law as mandated in Article 1 paragraph (3) of the 1945 Constitution, that a Law is a positive law that must be upheld and respected by every citizen.
- (2) That, democracy is a government system that has been recognized and practiced since long ago. The term democracy has its origin in the Greek words "*demos*" meaning people and the word "*kratos*" or the word "*cratein*" meaning government, thus, the word democracy means government by the people. In democracy system, people have the right and position as determinant in the government, the voice of people is the voice of God "*Vox Populei Vox Dei*". People choose their representatives to manage the government. Concept of democracy state in Indonesia is mandated in Article 1 paragraph (2) of the

1945 Constitution, namely that *"Sovereignty rests with the people and shall be implemented in accordance with the Constitution."*

- (3) That the right to vote and the right to be elected is a form of manifestation of democracy state. The right to vote and the right to be elected is a constitutional right that must be implemented to provide equality before the law and government as mandated in Article 27 paragraph (1) and Article 28D of the 1945 Constitution. That it is also specifically regulated in Article 43 of Law Number 39 of 1999 regarding Human Rights, which reads: *"Every Indonesian citizen has the right to vote and to be elected in general election based on equality of rights through direct, public, free, confidential, honest and fair voting in accordance with the provisions statutory regulations."* The right to vote is also included in the International Covenant on Civil and Political Rights (ICCPR), which has been ratified by Indonesia through Law Number 12 of 2005 on Ratification of the International Covenant on Civil and Political Rights. Based on the human rights principle, the right to vote and to be elected attach to every individual. Regional head election is one of mechanism of implementation of the right to vote and be elected in a democratic country, as specified in Article 18 paragraph (4) of the 1945 Constitution which states that

"Governors, Regents and Mayors. respectively as government heads of provinces, regencies and cities, shall be elected democratically".

- (4) That the right to elect and be elected as implementation of the democratic state concept must be limited by law (*nomocracy*), to prevent the democracy from being 'excessive' and chaos (*mobocracy*). *Negara hukum* (*state of law*) is a terminology in Indonesian vocabulary, as translation of *rechtsstaat* or *rule of law*. Both terms have the same direction, namely to prevent absolute power for the sake of recognition and protection of human rights. In the *Kamus Besar Bahasa Indonesia*, the term *negara hukum* (*state of law* or *rule of law*) is defined as a country that makes the law as the highest authority. *Rule of law* (*rechstaat*) is simply a state that puts the law as the basis of state power and implementation of that power in any form is conducted under the supremacy of law. In a *rule of law*, everything must be done according to the law. *State of law* determines that the government must be subject to the law, rather than the law must be subject to the government. *State of law* according to the Continental European concept which uses *civil law* legal system is called as *rechtstaat*, and *state of law* according to Anglo-Saxon concept that uses *common law* legal system is called as *rule of law*. According to Julius Stahl, elements of a *state of law* (*rechtstaat*) are

protection of human rights; separation or division of power to guarantee those rights; Government based on laws and regulations; and Administrative Justice in disputes. Meanwhile, according to A.V Dicey, elements of the *rule of law* are *supremacy of law, equality before the law, and guaranteed human rights*. Indonesia also holds the rule of law concept, so that the democracy in Indonesia is limited by law (*nomocracy*), as stated in the 1945 Constitution, Article 1 paragraph (3) that "*The State of Indonesia shall be a state based on the rule of law*".

- (5) That the purpose of establishment of Law Number 10 of 2016 is as Law on the second amendment to the Law Number 1 of 2015 regarding Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 regarding Election of Governors, Regents and Mayors to Become Law (Law Number 1 of 2015). As to regardless the Law Number 1 of 2015, Law Number 8 of 2015 regarding Amendment to Law Number 1 of 2015 on Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 Regarding Election of Governors, Regents and Mayors To Become Law (Law Number 8 of 2015), and finally Law Number 10 of 2016, all three are the main legal basis in the implementation of concurrent regional head election that has been held for the first time on December 9, 2015 and will be held again on the next February 15, 2017. Law Number 10 of 2016 as its earlier amendment, namely Law Number 8 of 2015 is a law that

specifically governs the Regional Head Election (Law on Regional Head Election) after less than 1 (one) decade of Regional Head Election being held based on regulation as specified Law Number 32 of 2004 regarding Local Governments (Law Number 32 of 2004) since its promulgation on October 15, 2004. Based on the decision of hearing meeting between the commission II and the government on June 3, 2009, it was agreed that Law Number 32 of 2004 is broken down into 3 (three) laws, namely, laws governing the local governments, law governing the village government and law of regional head election. This splitting-up of Law Number 32 of 2004 into 3 (three) Laws is necessary because the scope of arrangement of Law Number 32 of 2004 is deemed too extensive.

- (6) That, the establishment of Law Number 10 of 2016 was made by the Law makers because of some provisions in the Law Number 8 of 2015 are perceived still leaving a number of constraints in its implementation based on implementation of concurrent regional head Election on December 9, 2015. Really, in fact, both Law Number 10 of 2016 and Law Number 8 of 2015 basically provide important arrangement related to Regional head election.
- (7) That, from philosophy point of view, Law Number 10 of 2016 as a realization of implementing the constitutional mandate of Article 18 paragraph (4) of the 1945 Constitution which mandates that "*Governors, Regents and*



*Mayors each of head of regional government of the provinces, regencies, and cities shall be elected democratically*". That democracy is a government system that has been recognized and practiced since long ago. The term democracy has its origin in the Greek words "demos" meaning people and the word "kratos" or the word "cratein" meaning government, thus, the word democracy means government by the people. In democracy system, people have the right and position as determinant in the government, the voice of people is the voice of God "Vox Populei Vox Dei". People choose their representatives to manage the government. Concept of democracy state in Indonesia is mandated in Article 1 paragraph (2) of the 1945 Constitution, namely that "*Sovereignty rests with the people and shall be implemented in accordance with the Constitution.*" Based on that, thus, the Lawmakers have repeatedly established Laws that govern the direct Regional head election, that began to be regulated in Law Number 32 of 2004 regarding Local Government and the amendments thereto, namely. Law Number 8 of 2005 and Law Number 12 of 2008. The Regional head election has also metamorphosed into indirect Regional head election by Law Number 22 of 2014, but later became direct again by virtue of Government Regulation In Lieu of Law (Perpu) Number 1 of 2014 which was subsequently accepted by the Parliament to become Law Number 1 of 2015. This last Law

of Regional Head Election is survive until nowadays with the amendment thereto, namely, Law Number 8 of 2015 and most recently Law Number 10 of 2016. These amendments to Laws governing the Regional head election were aimed that the quality of democracy as mandated by Article 18 paragraph (4) of the 1945 Constitution to get better from time to time.

- (8) That, Article 41 paragraph (1), paragraph (2), paragraph (3) of Law Number 10 of 2016 are articles that are included in Chapter VII, namely regarding Registration of Governor Candidates, Regent Candidates, and Mayor Candidates. The articles *a quo* are principally chapters that materially have been provided for in the previous Laws, namely Law Number 1 of 2015 as amended by Law Number 8 of 2015 and lastly by Law Number 10 of 2016. Article 41 paragraph (1), paragraph (2), paragraph (3) of Law Number 10 of 2016 governs the requirements of supporting to those who enroll themselves to be candidates individual through independent line. As to the Article 41 paragraph (1), paragraph (2), paragraph (3) of Law Number 10 of 2016 has been amended, namely on its numbering, as a follow-up to the Constitutional Court Judgment Number 60/PUU-XIII/2015 with the injunction ordering that reference to total population is changed to list of voters. As to the list of voters in question is the previous General election, this is specified in the

Constitutional Court Judgment. Therefore, it is erroneous if questioned.

(9) That, Article 48 paragraph (2) letter b, Article 48 paragraph (7), and Article 48 paragraph (9) of Law Number 10 of 2016 are articles in Chapter VIII pertaining to Verification of Support to Candidate and Examination of Requirement Completeness. As to the Article 48 paragraph (2) letter b, Article 48 paragraph (7), and Article 48 paragraph (9) of Law Number 10 of 2016 are articles governing mechanism for verification and recapitulation of support to independent candidates. That, when the Legal Drafters allocated numbering which was a follow-up to the Constitutional Court Judgment Number 60/PUU-XIII/2015, then this makes the reference to individual line referring to the total population became not equivalent to the party /coalition of parties line. The census factual verification as specified in Article 48 paragraph (2) letter b, Article 48 paragraph (7), and Article 48 paragraph (9) of Law Number 10 of 2016 is for purpose of sake of realizing the justice and the equality.

(10) That, Article 41 paragraph (1), paragraph (2), paragraph (3) and Article 48 paragraph (2) letter b, Article 48 paragraph (7), and Article 48 paragraph (9) of Law Number 10 of 2016 actually is an arrangement that is the authority of the lawmakers and is mandated in Article 18

paragraph (7) of the 1945 Constitution which reads, "Composition and procedures of regional government administration shall be regulated in law". This is in conformity with the Constitutional Court Judgment Number 51-52-59/PUU-VI/2008, namely consideration of judgment number [3.17] stating that "Considering that the Court in its function as guardian of constitution is impossible to cancel Law or a part of its contents, if such a norm is an open authority delegation can be determined as legal policy by the Lawmakers. Even if the content of a law should be considered as bad, such as the provision on presidential threshold and separation of General election schedule as in the case a quo, the Court is still unable to cancel it, because something that is considered bad is not necessarily unconstitutional, unless such a legal policy product obviously violates the morality, rationality and intolerable injustice. Such a legal view is in line with the Constitutional Court Judgment Number 010/PUU-III/2005 dated May 31, 2005 which states as long as the policy option is not a matter that goes beyond the authority of the Lawmakers, does not constitute abuse of authority, and not obviously contrary to the 1945 Constitution, then such a choice of policy can not be canceled by the Court". Therefore, Article 41 paragraph (1), paragraph (2), paragraph (3) and Article 48 paragraph (2) letter b, Article 48 paragraph (7), and

Article 48 paragraph (9) of Law Number 10 of 2016 are articles that are classified as open legal policy for the Lawmakers (*open legal policy*) because constituting direct delegation of authority from the constitution for the sake of realization of a democratic Regional head election as specified in Article 18 paragraph (4) of the 1945 Constitution.

- (11) That the emergence of independent line was based on the Constitutional Court Judgment Number 5/PUU-V/2007, which in turn was enacted at the first time in Law Number 12 of 2008. In the legal consideration of the Constitutional Court Judgment Number 5/PUU-V/2007 number [3.15.19], stated that *"as to independent candidates for regional heads and vice regional heads, the Court is of the opinion, against the relevant individuals must be burdened with obligations relating to requirement of minimum number of supports to the relevant candidate. This is necessary for creation of balance with political parties that are required to have a certain minimum number of representatives in the Parliament or a certain minimum number of votes gained to be able to propose candidates for regional head and vice regional heads "*. Therefore, it is important for the Lawmakers to maintain the balance between the Political Party line and independent line as the mandate of the initial jurisprudence of independent line, namely, the

Constitutional Court Judgment Number 5/PUU-V/2007. This is also as the mandate of legal consideration of the Constitutional Court Judgment Number 5/PUU-V/2007 number [3.15.22] which states that *"determination of minimum support requirement for independent candidates is completely the authority of the lawmakers, whether to use the provisions as set forth in Article 68 of Law on Government of Aceh or with different requirement. To avoid legal vacuum (rechtsvacuum), before the lawmakers set the support requirement for independent candidates, the Court is of the opinion that the KPU, based on Article 8 paragraph (3) letters a and f of Law Number 22 of 2007 regarding General Election Organizer is authorized to make arrangement or regulations concerning the relevant matters in order to prepare and establish the procedures for implementation of Regional head election. In this case, KPU may use the provisions in Article 68 paragraph (1) of Law on Government of Aceh as a reference"*, likewise with the consideration of the Constitutional Court Judgment Number 5/PUU-V/2007 number [3.15.16] stating *"That the purpose and objective as referred to above, can not be achieved by means of the Court granting the Petitioner's Petition in its entirety, namely by declaring the articles against which the review is applied for by the Petitioner as contradictory to the 1945 Constitution. Because such a manner will result in a*

meaning that the nomination of regional heads and vice regional heads by political parties is also contrary to the 1945 Constitution. In fact, that is meant here is nomination of regional heads and vice regional heads other than through political parties, as specified by the Law on Local Government in Article 56 paragraph (2), nomination of independent candidates must also be opened. The Court is not a lawmaker who can add the provisions of statutory regulations by adding the wording in the laws that being reviewed. However, the Court may omit any words in a provision of law to allow that the norm whose materials are included in paragraph, article, and/or sections of the law do not conflict with the 1945 Constitution anymore. While, as to materials that are completely new that must be added into a law is the duty of the lawmakers to formulate". Therefore, although the Constitutional Court Judgment Number 60/PUU-XIII/2015 is compulsorily shall be implemented by the Lawmakers, but in the implementation, the lawmakers must be in line with the Constitutional Court Judgment Number 5/PUU-V/2007, which is the initial jurisprudence of the emergence of independent line, so that the Article 41 paragraph (1), paragraph (2), paragraph (3) and Article 48 paragraph (2) letter b, Article 48 paragraph (7), and Article 48 paragraph (9) of Law Number 10 of 2016 was born.

(12) That, the census factual verification is a mutual agreement when the discussion of Law Number 10 of 2016, because, previously, the House of Representatives asked to increase the number of supports for independent line with the aim of maintaining balance. However, the government was worried if this number is increased then the public will deem the lawmakers is trying to make difficult to the independent line. The middle way was by tightening the census factual verification of individuals. This is due to the government is also aware that so far the independent line used a sampling method that is very far from the accuracy of the support data that is required. If this line is made easier, then it will be very easy because only needs to collect identity cards (KTP). As to such a kind of arrangement is not new, because this kind of verification has been conducted by the General Election Commission (KPU) based on KPU Regulation Number 68 of 2009, which is the technical implementing regulation of Law Number 12 of 2008 which directly elaborates the Constitutional Court Judgment Number 5/PUU V/2007 on independent line.

(13) That in relation to the Petitioner' argument stating that she, in the previous general election, has not been sufficiently old to vote, whereas the reference used in Law Number 10 of 2016 is previous General Election, the Petitioner needs to pay close attention to Article 48



paragraph (2) letter b stating that the administrative verification shall be conducted based on the DPT of last General election and DP4 from the Ministry of Home Affairs. Where DP4 includes voters who have not reached 17 years old in the previous General election. Thus, the argument of the Petitioners stating that upon enactment of the regulation *a quo* then it eliminates the right to vote for first time voters based on the wording of the norm based on "last previous general election and Election in relevant regions" is unfounded, because the DPT of General Election will be updated again with materials from the DP4.

- (14) That, in relation to the desire of the Petitioner for the census factual verification result shall be announced to the public, the House of Representatives explained that in fact this is in line with the intention of the Parliament in the discussion on the Draft Law of Second Amendment to Law Number 1 of 2015. The House of Representatives in the discussion event wanted it to be announced in accordance with the transparency principle of the support for the independent candidate which so far has been very difficult to be proven for validity because frauds frequently occurred relating to that. However, the Government as lawmaker, did not want this factual verification opened to the public. The Government's reason in this discussion on Draft Law is because an

openness is a good thing however is not the time because, anxiously the openness to announce the supports for independent candidates to the public will lead to chaos in public. Therefore, on May 31, 2016, it was agreed in this regard that, this verification result shall not be announced.

(15) That, it is deemed necessary to look at the background of formulation and discussion of the related articles in the Law *a quo* as follows:

a. That the issue on equality between the political party supporting line and individual supporting line in Regional head election is a discussion topic that has been frequently reviewed by the lawmakers during the course of discussion on draft law regarding the Second Amendment to Law Number 1 of 2015. The essential thing the Parliament desired in the discussion is to increase percentage of minimum requirement of support for independent candidates, this is due to, based on the Constitutional Court Judgment Number 60/PUU-XIII/2015, the balance/equality which should be maintained in accordance with the Constitutional Court Judgment Number 5/PUU-V/2007 has changed, namely due to the reference of "number of population" has changed to "the list of voters". Furthermore, "the list of voters" as referred to in the Constitutional Court

Judgment Number 60/PUU-XIII/2015 is in the "previous General Election". It is this desire for balance between the political party line and individual line which was frequently discussed in the Decision of Draft Law *a quo*.

- b. That in the discussion, the Government also wanted the improvement of quality of the factual verification. This is due to the supporting requirement that has been happening so far is often far from its material truth. This may affect on the lack of legitimacy of the candidate pair if they win the Regional head election. In the surveillance activity by the House of Representatives in regions, verification which has so far been carried out by the lineup of organizer, is often not conducted. Moreover, even if the factual verification is conducted, the method performed is by sampling. This clearly implied on the correctness of data of supports for independent candidate obtained.
- c. That, in the discussion, the House of Representatives has asked for the political party support requirement is reduced from 20% of seats and 25% of votes to 15% of seats and 20% of votes. This was one of options that emerged in the discussion if the Parliament's desire to increase the supporting requisite for independent candidates is not reached. However, on

May 28, 2016, it was decided in the Meeting of the Work Committee for Discussion of Draft Law on Second Amendment to Law Number 1 of 2015, that the support requisite for candidate who competes on independent basis and candidate who competes through political parties is unchanged with little adjustment in Article 41 to include the Constitutional Court Judgment Number 60/PUU-XIII/2015. Thus, with such a decision in that article, the Article 48 is also subjected to arrangement on census factual verification for individual persons.

- d. That, the main purpose of census factual verification is to ensure that the candidate support requisites are really valid and accountable so that can be accounted for, does not make data manipulation let alone collecting ID cards (KTP) from unrelated parties (for example, photocopies of ID Cards from samsat, from bank marketing data as well as from data in village offices). This verification is needed because so far it was conducted by sampling even proved such a verification was not carried out. This is contra-productive if continues and remain conducted because the objective of Regional head election is to give birth leaders who are clean, qualified and credible. Therefore, this method is merely for the sake of realizing a democratic

Regional head election as mandated by Article 18 paragraph (4) of the 1945 Constitution.

Whereas, based on the aforesaid arguments, the House of Representatives requests that Your Honour Chairman of Panel of Judges of the Constitutional Court to be pleased to award the following injunction:

- 1) Declaring the petition *a quo* is rejected in its entirety or at least the petition *a quo* is unacceptable;
- 2) Declaring the Statements of the House of Representatives are acceptable in its entirety.
- 3) Declaring the Article 41 paragraph (1), paragraph (2), paragraph (3) and Article 48 paragraph (2) letter b, Article 48 paragraph (7), and Article 48 paragraph (9) of Law Number 10 of 2016 are not contrary to Article 1 paragraph (3), Article 27 paragraph (1), Article 28D paragraph (3), Article 28 paragraph (2), Article 18 paragraph (5), and Article 22E paragraph (1) of the 1945 Constitution;
- 4) Declaring the Article 41 paragraph (1), paragraph (2), paragraph (3) and Article 48 paragraph (2) letter b, Article 48 paragraph (7), and Article 48 paragraph (9) of Law Number 10 of 2016 still have binding legal force.

If Your Honour Chairman of Panel of Judges of the Constitutional Court opines otherwise, we request for judgment in justice and fairness (*ex aequo et bono*).

**[2.4]** Considering that the President in the meeting on September 5, 2016 gave verbal statement and written statement dated September 5, 2016 that was received at the Clerk Office of the Court on October 27, 2016, which essentially pointed out as follows:

As to the petition of the Petitioners, the Government will point out as follows:

1. First of all the government would like to point out that the rights of every citizen as specified in the provision of Article 28 of the 1945 Constitution shall be implemented in full by understanding each of meanings as contained in each article therein, on which each of such right, freedom and protection has limitation, this is as specified in Article 28J of the 1945 Constitution, which essentially states that every person in performing his/her obligation is obliged to respect the human rights of others and is subject to limitations set by Law with the sole purpose to ensure recognition of respect to the rights of others and to satisfy the demands for justice in accordance with moral, religious value, security and public order considerations.
2. We all need to understand that the prevailing statutory regulations are national agreements that were established by the Parliament as representative of the Indonesia people together with the Government as the state administrator, through the thought and experience of the

evolving dynamics in the state administration. Thus, each party should be able to respect and implement the provisions set forth therein wisely.

3. That, a general election to elect regional heads democratically based on the direct, public, free, confidential, honest and fair principle, is expectably able to recruit leaders or public officials who are good, having adequate moral integrity and capability, gaining trust of the community and able perform mandate of office (*vertrowenlijk-ambt*);
4. That, in order to get the leaders or public officials as referred to above, certain criteria and conditions are required, that shall be governed by the prevailing statutory regulations, this is a standard necessity and requirement for someone who wants to nominate him-/herself to be the aforesaid public officers, so that, in future expectably the public officials who really have legitimacy and support from the people they lead, who are clean, dignified, honest and have a good and well-maintained moral integrity, can be obtained.
5. That, the state has the right to make criteria on certain requirements to be able to occupy certain positions, either political office, public office or career office, when examined and observed closely then basically almost all the requirements of the certain "public official" election stage are solely to get the best leaders in

performing the governance and services to the public in order to realize an orderly, fair, and prosperous life as specified in the Preamble of the 1945 Constitution;

6. This also applies to the provision *a quo* that is currently being reviewed by the Petitioners, according to the government the limitation on the criteria of supporters of independent candidate who will enroll him-/herself in the Regional Head General Election (both for first-time voters/migrants) is aimed at ensuring and giving a guarantee that every person who gives such support are mature persons, competent and able to assess any dynamics that occur in terms of the regional head election event in certain regions in order to provide support for someone who will enroll him-herself to follow in the Regional head general election contestation.
7. As another consideration, that logically someone who has been registered in the permanent list of eligible voters of the previous General election, has been able to see and assess the dynamics of general elections and the real fact he/she has experienced, thus, he/she has the appropriate mindset in giving consideration to someone who will nominate him-herself to be head region candidates.
8. That can also serve as a benchmark for comparison of equality between independent candidate and candidate who is promoted by the political parties, as we all know that someone who enroll him-/herself through political party



has passed through a long recruitment process, by which his/her self-specification has been tested in the party body and generally has been known and recognized by the public.

9. In dealing with everything we should be more inclined to see from a positive point of view, arrangement relating to criteria of regional head candidates supporters even will provide powerful legitimacy for the regional head candidate. Supports obtained from citizens who have been registered in the Permanent List of Eligible Voters can be used as a benchmark of existence of such regional head candidate from individual line, without eliminating the right to vote of the first-time voters. Because the right to support can not waiver the right to vote.
10. Similarly with the factual verification, if the intension of the statements of support from the public are true, the signatures are true and the ID Cards submitted are true, then, each supporter will give time priority in fulfilling the factual verification requirement. According to the Government this is not a problem in nomination of individual regional head candidate.
11. This, according to the Government, is a mirror on existence of initial support that is a form of public trust in the regional head candidate pairs who competes in Regional Head General Election, the requirements set out in the object of the petition *a quo* has been in line with

the constitutional mandate that portray the people's sovereignty, as well as a manifestation of public support maximally in the framework of implementation of sustainable development through a higher quality electoral system, such a provision is intended as a requirement of initial selection that indicates acceptability (confidence level) of candidates for regional head and vice regional head from independent line, which is reflected from the support of voters.

12. That, paying attention to the provisions in Article 18 paragraph (4) and Article 22E of the 1945 Constitution, the Government is of the opinion that the requirements of candidates for regional heads, as specified in the above provisions, is the authority of the lawmakers (the House of Representatives and the President) to determine certain requirements, including certain moral ethic requirements in accordance with the demand for the relevant public offices, and therefore, according to the Government, such a choice of law (*legal policy*) can not be reviewed unless conducted arbitrarily (*willekeur*) and exceeding the authority of the lawmakers (*detournement de pouvoir*);

13. In addition to foregoing, according to the Government, it is obvious that the provisions *a quo* is in line with the provision in Article 28J paragraph (2) of the 1945 Constitution, stating that, "*In performing their rights and freedom, every person is obliged to be subject to*

*limitations set by laws with the sole purpose to ensure recognition of respect to the rights of others and to satisfy the demands for justice in accordance with moral, religious value, security and public order considerations in a democratic society"*

14. General election of regional head and vice regional head is one of tools and means for implementation of Government that is based on democracy in every province and regency/city in the Republic Indonesia. General election of regional heads can also be formulated as a mechanism of selecting candidate pairs who are trusted through the votes obtained in the general election phase to perform the duties of Regional Government leadership. This electoral system is in the form of a set of methods to transfer votes of the voters to certain candidate pairs of regional head and vice regional head so as to determine the winning candidate pair based on number of votes they obtain.

Briefly, this electoral system relates to various provisions on requirements of regional head candidate, method to determine the supports, determination of voters, determination of candidate pairs, voting, vote counting, determination of the winner, proposition on legalization of appointment of regional head candidates to be regional head, and inauguration.

15. Various changes that occurred from time to time in the implementation of regional head election in Indonesia showed that democracy in Indonesia is still and will continue in process. Therefore, the giving of meaning of democracy itself is the most important thing in implementation of better state administration in order to realize the aspirations in the preamble of the 1945 Constitution as the constituent of the Republic of Indonesia.
16. That, as to some provisions being reviewed, in addition to those that have been explained by the government, the Government considers there is no constitutional problem, thus, the Government refers to the Panel of Judges to assess whether or not the object of petition *a quo* contradicts to the 1945 Constitution.
17. That, principally, each rule the state makes is solely to create a better living system in order to maintain continuity of the government and advancement in all aspects of life in efforts of realizing the aspiration of the Indonesian nation as mandated in the 1945 Constitution, likewise with the provisions *a quo* that is currently being reviewed.
18. The provisions in the Regional Head Election Law is a political commitment to improve the quality of implementation and result of the Regional head election, is a further arrangement of the provision in Article 18

paragraph (4) of the 1945 Constitution which governs the regional head election democratically. Norma that is the object of petition *a quo* is one of ways out chosen by the Lawmakers to address the problems that occurred so far and resulted in problems in the implementation of Regional head election so that causing the Regional head election did not take place in *fairness* condition.

### **Conclusion**

Based on the aforesaid description, the Government request Your Honour Chairman/ Panel of Judges of the Constitutional Court who examines, adjudicates, and decides the application for judicial review of Law Number 8 of 2015, Law Number 10 of 2016 regarding Amendment to Law Number 1 of 2015 on Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 Regarding Election of Governors, Regents and Mayors against the *Constitution of the Republic of Indonesia of 1945*, to award the following judgments:

1. Accepting the Statement of the Government in its entirety;
2. Rejecting the petition of the Petitioners in its entirety or at least declaring the Petitioners' petition is acceptable (*niet ontvankelijke verklaard*);
3. Deciding that the object of petition filed by the Petitioners is not contradictory to the Constitution of the Republic of Indonesia of 1945.

However, if Your Honour Chairman/ Panel of Judges of the Constitutional Court opines otherwise, we request for judgment in justice and fairness (*ex aequo et bono*).

**[2.5]** Considering that the related Party, the General Election Commission, in the hearing on September 15, 2016 gave its verbal statement and written statement dated September 5, 2016 and September 14, 2016 that was received at the Clerk Office of the Court on September 5, 2016 and September 15, 2016 which essentially pointed out as follows:

- a. That, substance of the petition in the Case Number 54/PUU-XIV/2016 Dated August 4, 2016 essentially states that the provision in Article 41 paragraph (1), paragraph (2), paragraph (3), Article 48 paragraph (2) letter b, paragraph (7) and paragraph (9) of Law Number 10 of 2016 is discriminatory against the Candidates for Governor and Vice Governor, Candidates for Regent and Vice Regent and/or Candidates for Mayor and Vice Mayor who came from of the independent line;
- ~~b-~~ That, the provision in Article 41 paragraphs (1) and (2) of Law Number 10 of 2016 is implementation of the Constitutional Court Judgment Number 60/PUU-XIII/2015 which states that support requisite for independent candidates is based on number of population who have the right to vote and included in the permanent list of eligible voters in the relevant region in the last

- previous general election or election in the relevant region. Further, the provision in Article 41 paragraph (3) of Law Number 10 of 2016 states that the support for independent candidate pairs shall be made in a letter of support accompanied with a photocopy of electronic ID Card or a certificate issued by the relevant population service office and civil registry certifying that the relevant resident has been domiciling within the administrative area of the region which is holding the Election for at least 1 (one) year and is recorded in the DPT of the previous General Election in the relevant province or regency/city;
- c. That, in order to guarantee the right of every eligible citizen to give their support to the individual candidates pair, Law Number 10 of 2016 specifies the transitional provision, namely Article 200A paragraph (4) stating, *"the requirement of support to independent candidates as well as a condition to be registered as voter shall use Electronic Identity Cards effective as of January 2019"*. In addition, the provision in Article II of Law Number 10 of 2016 affirms this Law comes to effect as of the promulgation date. The provision means that the applicability of the Law is non-retroactive;
- d. That, paying attention to the provisions in Law Number 10 of 2016 as described in letters b and c, the KPU RI made a policy as specified in the provision in Article

- 14 paragraph (1) letter a of the KPU Regulation Number 5 of 2016 regarding the Second Amendment to KPU Regulation Number 9 of 2015 on Nomination of Candidates for Election of Governors and Vice Governors, Regents and Vice Regents and/or Mayors and Vice Mayors, stating, "individual support document shall be in the form of statement of support that is accompanied with a photocopy of Identity Card (KTP) or a certificate issued by the population service office and civil registry certifying that the relevant resident has been domiciling within the administrative area of the region which is holding the Election for at least 1 (one) year and is recorded in the Permanent List of Eligible Voters of the last General Election or Election and/or the List of Potential Electoral Voters";
- e. That policy of KPU RI as in letter d is made in addition to considering the construction of Article 41, Article 200A paragraph (4), and Article II of Law Number 10 of 2016 also pays attention to the social reality that, based on DP4 data received by the KPU RI from the Ministry of Home Affairs, after analysis, there were 5,296,758 voters have not possessed e-KTP among 41,802,538 voters in 101 (one hundred and one) regions that hold Regional head election in 2017. Therefore, the KPU deems necessary to assert in a Regulation on Nomination for Election of Governors and Vice Governors,



Regents and Vice Regents and/or Mayors and Vice Mayors related to spirit of the lawmakers that is reflected in the transitional provision guarantees implementation of constitutional rights of people who are qualified as voters to give their support to independent candidate pairs;

- f. That, related to the procedures of factual verification on support to independent candidate pairs as referred to in Article 48 paragraph (7) of Law Number 10 of 2016 should be understood comprehensively by using systematic interpretation. Provision in Article 48 paragraph (7) of Law Number 10 of 2016 relates to the provision of Article 48 paragraph (5) of Law Number 10 of 2016 which states, "factual verification shall be carried out not later than 14 (fourteen) days as of the required support document to independent candidate pairs is submitted to the PPS". Further, provision in Article 48 paragraph (7) of Law Number 10 of 2016 states, "factual verification as referred to in paragraph (5), on the candidate's supporter who can not be met during the factual verification period, the candidate pair shall be given with opportunity to present the relevant supporters in the office of the PPS not later than 3 (three) days as of the PPS fails to meet such supporters;
- g. That, paying attention to the provision in Law Number 10 of 2016 as described in letter f, the KPU RI made a

policy on procedures of factual verification on support to independent candidate pairs as specified Article 24 of KPU Regulation Number 5 of 2016, "PPS conducts factual verification by directly visiting supporters of candidate pairs. If the supporters can not be met by PPS in the factual verification, PPS shall coordinate with Prospective Candidate Pairs and/or the liaison team of Prospective Candidate Pairs shall be given with opportunity to present the relevant supporters in village or sub-district areas at the predetermined places not later than 3 (three) days as of the supporter can not be met in order to verify and examine the truth of the supports. Further, if the Prospective Candidate Pairs and/or the liaison teams of Prospective Candidate Pairs fails to present the supporters in question, then the supporters are still given with an opportunity to directly visit the PPS in order to prove their support at the latest before the end of factual verification period. If until the expiry of factual verification period, the Prospective Candidate Pair fails to present their supporter, then the support is declared ineligible;

- h. That the policy of KPU RI as described in the letter g earnestly pays attention to the provision in Article 48 paragraph (5) of Law Number 10 of 2016 which states, "factual verification carried out not later than 14

- (fourteen) days as of the requisite support documents to the independent Candidate Pairs are submitted to PPS". If the provision in Article 48 paragraphs (7) and (8) of Law Number 10 of 2016 **is read in a piece** without associated with the provision in Article 48 paragraph (5) of Law Number 10 of 2016, the support which can not be presented in the office of PPS 3 (three) days as of the supporters can not be met, shall be declared ineligible prior to the expiry of factual verification period, then, the Prospective Candidate Pair suffer losses because the factual verification time limit of 14 (fourteen) days as referred to in Article 48 paragraph (5) of Law Number 10 of 2016 is not expired yet;
- i. That the provision in Article 48 paragraph (2) letter b of Law Number 10 of 2016 states *"Administrative verification as referred to in paragraph (1) shall be carried out based on the Permanent List of Eligible Voters of the last General Election and the List of Potential Electoral Voters from the Ministry of Home Affairs."*
  - j. That, if the administrative verification is carried out based on the Permanent List of Eligible Voters of the Last General Election and the List of Potential Electoral Voters, a potential problem exists, namely, the voters will lose their right to support the independent Candidate Pairs because of not recorded in

the data. For example, a region whose Last Permanent List of Eligible Voters is the General Election of President and Vice-President 2014, then within the period as from the implementation of General Election of President and Vice President 2014 until the Concurrent Regional Head Election 2017 there will be voters who have been 17 years old or have/have ever married and/or changes their domicile so that the voters have not been recorded into the Permanent List of Eligible Voters of last general election and the List of Potential Electoral Voters;

k. That, paying attention to number 1 and number 2, in order to guarantee the exercise of rights of the voters to give support, the KPU made a policy as specified in the Article 20A of the KPU Regulation Number 5 of 2016 regarding the Second Amendment to KPU Regulation Number 9 of 2015 on Nomination of Candidates for Election of Governors and Vice Governors, Regents and Vice Regents and/or Mayors and Vice Mayors, namely, as follows:

a. If based on administrative verification, the statement of support conforms to the Identity Card or a Certificate issued by the Population Service Office, but the name of the supporter is not recorded in the Permanent List of Eligible Voters in the Last General Election or Election and/or the List of Potential Electoral Voters, then, the

Provincial KPU/KIP Aceh or KPU/KIP of Regency/City shall coordinate with the Population Service Office and Civil Registry to re-examine the relevant data of the relevant supporters against the List of Potential Electoral Voters.

- b. In the event the examination has been conducted and the Population Service Office and Civil Registry declares the supporter data is correct, then the support is declared eligible.
- c. In the event the examination has been conducted and the Population Service Office and Civil Registry declares the supporter data is not correct, then the support is declared ineligible.
- d. In the event the examination has been conducted and the Population Service Office and Civil Registry can not declare the correctness of the supporter data, then the support is declared not yet eligible, but not eliminate the support, however will be followed up with factual verification by PPS.

**[2.6]** Considering that the Petitioners submit a written conclusion dated October 25, 2016 that was received in the Clerk Office of the Court on October 25, 2016, which essentially stays on its position;

[2.7] Considering that in order to shorten the description in this judgment, then anything that is specified in the minutes of hearing, has been included and forming integral part of this judgment;

### **3. LEGAL CONSIDERATIONS**

#### **Competency of the Court**

[3.1] Considering that based on Article 24C paragraph (1) of the Constitution of the Republic of Indonesia of 1945 (hereinafter referred to as the 1945 Constitution), Article 10 paragraph (1) letter a of Law Number 24 of 2003 regarding the Constitutional Court, as amended by Law Number 8 of 2011 on Amendment to Law Number 24 of 2003 regarding the Constitutional Court (State Gazette of the Republic of Indonesia of 2011 Number 70, Supplement to State Gazette of the Republic of Indonesia Number 5226, hereinafter referred to as Constitutional Court Law), Article 29 paragraph (1) letter a of Law Number 48 of 2009 regarding Judicial Power (State Gazette of the Republic of Indonesia of 2009 Number 157, Supplement to State Gazette of the Republic of Indonesia Number 5076, hereinafter referred to as Law 48/2009), one of authorities of the Court is to review the Laws against the 1945 Constitution;

[3.2] Considering that the petition of the Petitioners is regarding review of constitutionality of Law in casu Law Number 10 of 2016 regarding Second Amendment to Law Number 1 of 2015 on Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 Regarding Election of Governors, Regents and Mayors To Become Law (State Gazette of the Republic of Indonesia of 2016 Number 130, Supplement to State Gazette of the Republic of Indonesia Number 5898, hereinafter referred to as Law 10/2016) against the 1945 Constitution, thus, the Court is competent to adjudicate the petition *a quo*;

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

[3.3] Considering that based on Article 51 paragraph (1) of Constitutional Count Law along with Elucidation thereof, those who may act as Petitioner in review of an Law against the 1945 Constitution are those who deem their constitutional rights and/or authorities have been impaired by enactment of Law against which the review is applied for, namely:

- a. *Indonesian citizen individuals;*
- b. *customary law community unit as long as still alive and in accordance with the development of society and the principles of the Unitary Republic of Indonesia as specified in the Legislation;*
- c. *public or private legal entities;*
- d. *state institutions”;*

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

- a. his position as Petitioner as referred in Article 51 paragraph (1) of the Constitutional Court;
- b. existence of impairment of constitutional rights and/or authorities granted by the 1945 Constitution, as a result of enactment of Law against which the review is applied for;

**[3.4]** Considering that the Court since the Judgment Number 006/PUU-III/2005, dated May 31, 2005 and Judgment Number 11/PUU-V/2007, dated September 20, 2007 and subsequent judgments, have held that the impairment of constitutional rights and/or authorities as referred to in Article 51 paragraph (1) of the Constitutional Court Law must meet five requirements, namely:

- a. existence of constitutional right and/or authority of the petitioner granted by the 1945 Constitution;
- b. that the constitutional right and/or authority is deemed to have been impaired by application of the Law against which the review is applied for;
- c. Such an Impairment of constitutional rights and/or authorities of the Petitioners is specific and actual or at least potential in nature which, according to reasonable reasoning, can be ascertained to occur;



- d. existence of causal relationship (causal verband) between the relevant impairment and the enactment of Law against which the review is applied for;
- e. possibility that upon the acceptance of the petition, such a constitutional impairment will not occur or recur;

[3.5] Considering that based on Article 51 paragraph (1) of the Constitutional Court and the conditions of impairment of constitutional rights and/or authorities as described above, further, the Court will consider the legal standing of the Petitioner in accordance with the description of the Petitioner and evidences submitted by the Petitioner as follows:

- a. **Petitioner I** is Perkumpulan Teman Ahok (PTA), that was established based on Notarial Deed of Dian Lestari Dewi, S.H., Number 1, dated June 16, 2015, in this matter represented by Aditya Yogi Prabowo as Chairman of Management Board of Perkumpulan Teman Ahok (see exhibit P-2);
- b. **Petitioner II** is Gerakan Nasional Calon Independen (GNCI), that was established based on Notarial Deed of Reni Herliani, S.H., Number 04, dated June 17, 2010 and has been legalized by the Ministry of Law and Human Rights Number HU-170.AH.01.06 Year 2010, dated December 20, 2010, in this matter represented by Moch. Fadjroel Rachman, S.E., as General Chairman of GNCI. The Petitioner II has

gained its existence and its legal standing by the Court as included in the Judgment Number 60/PUU-XIII/2015, dated September 29, 2015 (see Exhibit P-13);

- c. **Petitioner III** is Perkumpulan Kebangkitan Indonesia Baru (PKIB), that was established based on Notarial Deed of Anita Manuella, S.H., Number 1, dated February 24, 2014 and has been legalized by the Ministry of Law and Human Rights Number AHU-0006055.AH.01.07.Year 2015, dated September 25, 2015, in this matter represented by Reinhard Parapat, as General Chairman PKIB and Mustaghfirin, as General Secretary PKIB (see Exhibit P-17);
- d. **Petitioner IV** is a first-time voter and the **Petitioner V** is a taxpayer who both qualify themselves as individual Indonesian citizens who have given their support and have submitted the support form to the Petitioner I for nomination of Basuki Tjahaja Purnama and Heru Budi Hartono as independent candidate in the Regional Head Election of DKI Jakarta in 2017 (see Exhibits P-18 up to P-23);

That according to the Petitioners Article 41 paragraph (1), (2) and (3), Article 48 paragraph (2) letter b of Law 10/2016 which specifies "*cumulative requirement for Voters who may give their support to the Independent Candidate must be recorded in the DPT of the previous General Election or election in the relevant region or the List of Potential Electoral Voters (DP4)*" is potentially detrimental to the constitutional rights of the Petitioners, such as,

constitutional rights as referred to in Article 1 paragraph (3), Article 27 paragraph (1), Article 28D paragraph (1), Article 28D paragraph (3), Article 28I paragraph (2) of the 1945 Constitution. As to the impairments of constitutional rights of the Petitioners are as follows:

a. **Petitioner I** in its articles of association has the vision, mission, objectives, scope of activities, among other things:

- Vision, *"To Assemble all Jakartan residents who have the desire to make Jakarta better, orderly, humane and free of corruption in the future"*;
- Mission, *"To accommodate aspirations of Jakartan residents to be more active in developing better Jakarta"*;
- Objective, *"To raise and bring forth cadres of national leaders who are honest, brave, decisive, fair, competent, integrity, smart and healthy, by relying on the values of One Almighty God, Pancasila and the 1945 Constitution"*;
- The scope of activities, *"To establish proactive communication and cooperation among organizations and other parties in increasing support for Ahok".;*

In order to implement the vision, mission, objectives, scope of activities above, the Petitioner I assembled supports and/or collected ID cards from the fist-time

voters for nomination Basuki Tjahaja Purnama and Heru Budi Hartono in the Regional Head and Vice Regional Head of DKI Jakarta Election 2017 coming from independent candidates. If the support requisite for the independent candidate is "must be included in DPT of the 2014 election and/or the previous election" as specified in the Law *a quo*, then, there will be a lot of voters threaten to lose their constitutional right to give support to the relevant candidates;

b. **Petitioner II** argued having legal standing to file the petition *a quo* by relying on the Court Judgment Number 60/PUU-XIII/2015, dated 29 September 2015. After the Court has examined carefully the judgment *a quo*, it is apparently correct that the Petitioner II (GNCI) has been accepted its legal standing to file a petition for judicial review of norm substance of Law relating to the democratic issues;

c. **Petitioner III** its articles of association has the vision and mission, among other things,

- Vision, *"to educate the nation in accordance with the Pancasila and the 1945 Constitution"*;

- Missions, *"To fight for the birth of legislation and various government policies that favor the poor people. To create a fair and dignified atmosphere of democracy"*;

In order to implement the aforesaid vision and missions, the Petitioner III has so far been active and participated

in guarding the democracy, particularly in encouraging candidacy of independent candidates in elections that have been held throughout Indonesia. The application of the Law *a quo* potentially restricts the constitutional right of citizens who want to compete for leadership in their region through individual line and also preclude the constitutional rights of the voters to support the enrolment of the best candidates in the election for advancement of their respective regions;

d. **Petitioner IV** is a young voter, 21 years old, who in the previous General election has not been registered in the DPT. The Petitioner IV in Regional Head and Vice Regional Head of DKI Jakarta Election 2017 gave the support to the independent candidates Basuki Tjahaja Purnama and Heru Budi Hartono that is evidenced by a Statement of Support To Independent Pair (exhibit P-23). The enactment of the Law *a quo* clearly injures and eliminates the constitutional rights of the Petitioner to give support to the independent candidates *a quo*;

e. That the **Petitioner V** is a DKI Jakarta resident who, in the Regional Head and Vice Regional Head of DKI Jakarta Election 2017 gave his support to the independent candidates Basuki Tjahaja Purnama and Heru Budi Hartono that is evidenced by a Statement of Support To Independent Pair (exhibit P-23). The enactment of the Law *a quo* clearly injures and eliminates the constitutional rights

of the Petitioner to give support to the independent candidates *a quo*;

**[3.6]** Considering that based on the arguments of the Petitioners *a quo* associated with the Article 51 paragraph (1) of the Constitutional Court, and the Court Judgment as described in paragraph **[3.5]**, according to the Court the Petitioners have been disadvantaged by enactment of the Law *a quo* because there is a causal relationship (*causal verband*) between the Petitioner's loss and the enactment of the Law *a quo*. Such an impairment of constitutional right of the Petitioners is potential in nature which, according to reasonable reasoning, can be ascertained to occur, and possibility that upon the acceptance of the petition, such a constitutional impairment of the Petitioners will not occur or recur. Based these assessment and legal considerations, the Court is of the opinion that the Petitioners have legal standing to file the petition *a quo*;

**[3.7]** Considering that, since the Court is competent to adjudicate the petition *a quo* and the Petitioners have legal standing to file the petition *a quo*, then, the Court further will consider the substances of the petition;

#### **Merits of the Petition**

[3.8] Considering that the Petitioners files a petition for judicial review on Law 10/2016, Article 41 paragraph (1) to the extent of phrase "**and recorded in the permanent list of eligible voters in the last previous general election or election in the relevant region**", Article 41 paragraph (2) to the extent of phrase "**and included in the permanent list of eligible voters in the previous last general election or Election in the relevant region**" and Article 41 paragraph (3) to the extent of phrase "**and included in the Permanent List of Eligible Voters (DPT) of previous General Election in the relevant province or Regency/City**", Article 48 paragraph (2) letter b, and Article 48 paragraph (7) and paragraph (9) to the extent of word "**not**". According to the Petitioners, the provision a quo is contrary to Article 1 (3), Article 27 paragraph (1), Article 28D paragraph (1), Article 28D paragraph (3), Article 28 paragraph (2), Article 18 paragraph (5), and Article 22E paragraph (1) of the 1945 Constitution for the following reasons:

According to the Petitioners, Article 41 paragraph (1) to the extent of phrase "**and recorded in the permanent list of eligible voters in the last previous general election or election in the relevant region**", Article 41 paragraph (2) to the extent of phrase "**and included in the permanent list of eligible voters in the previous last general election or Election in the relevant region**" and Article 41 paragraph (3) to the extent of phrase "**and included in the Permanent List**

*of Eligible Voters (DPT) of previous General Election in the relevant province or Regency/City”, and Article 48 paragraph (2) letter b of Law 10/2016 is ex post facto or retroactive in nature.*

Linguistically, the word “included” or “recorded” that is formulated passively by the Lawmaker in the article *a quo* has indicates the sense and contains the meaning which has completed or has been carried out, and this is reaffirmed with existence of phrase “*The election or the previous last election*”. Denotation of past time in the phrase that is formulated by the Lawmaker in the article *a quo* is not vague, but assertive and very clear, which therefore can not be interpreted else, but as written in the wordings of that article;

In addition, according to the Petitioners, the phrase “*recorded/included in the DPT*” is an action that is stelsel passive nature and embracing stelsel passive, because voters that are included by the state into the population system is a free will by the voters. Free will by the new voters will be open if they are not registered in the DPT and if they want to be included in the DPT they must undergo the procedure as set out in the regulations or put into the additional DPT by the KPU, whether they desire or not;

According to the Petitioners, Article 48 paragraph (2) letter b of the Law *a quo* governs the verification of voter's supports to independent candidates by the KPU. If the voter's



name is not included in the DPT of last general election or in the List of Potential Electoral Voters (DP4), then, the KPU will eliminate the right to support of the relevant voter. Although the Law *a quo* has expanded the meaning of DPT in Article 48 by adding DP4, it does not mean the right of all voters who support the independent candidates is protected because there are other voters, such as, new voters, voters who just changed their domicile but have exceeded the time limit of 6 months or one year as required by the Law, will lose their right to support the independent candidates;

Such a categorization of voters on contradictory-administrative basis is an unequal treatment under the law which, in turn, leads to discrimination against the voters based on certain aspects, such as, age aspect and newcomer and old settler aspect. From age aspect, with the norm as specified in the article being reviewed here, it can be said that there will be elimination of Voters aged around 17-21 years old who have joined in supporting the Independent Candidate in the Regional head election 2017, because almost certainly their names are not recorded in the DPT of previous General Election/Election. Even if their names are included in the DP4, then, no one knows whether they have the right to vote or not, because the voters never obtained DP4, and that list was never published officially, different from DPT which might still be accessed publicly by the voters. therefore, the

first-time voters are very likely to be eliminated in the support to independent candidates;

Voter who is not included in the DPT of previous General election/election automatically does not pass the administrative verification, thus will be discriminated for administrative reason that, in turn, experience treatment and situation of uncertainty of fair law because his right to support the independent candidate is eliminated or invalidated. The elimination or invalidation of voter's right to support the Independent Candidates in the Law does not relate at all to something he does. This means that this norm "handcuffs" the political right in a Voter with an obligation that is not inherent in him/her, thus, it is unfair someone lose his right by something that is not his act, and contradictory to Article 28D paragraph (1) of the 1945 Constitution;

Based on the above reasons, according to the Petitioners, provision in Article 41 paragraph (1) to the extent of phrase "*and recorded in the permanent list of eligible voters in the last previous general election or election in the relevant region*", Article 41 paragraph (2) to the extent of phrase "*and included in the permanent list of eligible voters in the relevant region in the general election or the previous last Election in the relevant region*", and Article 41 paragraph (3) to the extent of phrase "*and included in the Permanent List of Eligible Voters (DPT) of previous*

*General Election in the relevant province or Regency/City*”, and Article 48 paragraph (2) letter b of Law 10/2016 contains element of unequal treatment before the law, creating discrimination, and creating injustice, thus, contradictory to Article 27 paragraph (1), Article 28 paragraph (2), and Article 28D paragraph (1) of the 1945 Constitution;

According to the Petitioners, the provision in Article 48 paragraph (7) of Law *a quo* violates or at least potentially creates uncertainty of fair law because the 3 (three) days period, within which the supporters of independent candidates can not be met by the PPS, is included into the 14 (fourteen) days period of factual verification;

That the factual verification process for 14 (fourteen) days by PPS/PPL, none knew its schedule thus, this is the authority or free-will of the officers. Various technical problems will arise and may occur in the field in the factual verification process due to several factors and reasons. Arrangement of such technical issues should not necessarily be made and included in the Law but will be sufficient if specified in the KPU technical regulation, which allows flexibility of implementation in the filed in accordance with condition and circumstance of the region that is very different between one and others;

That based on the above reasons, the Petitioners requests the Court for the timing of 3 (three) days to present voters in the factual verification process in Article 48

paragraph (7) of Law 10/2016 shall be interpreted as 3 (three) days as of the time limit of 14 days of factual verification as referred to in Article 48 paragraph (3) expires;

According to the Petitioners, the provision in Article 48 paragraph (9) of Law 10/2016 that specifies factual verification shall not nr announced violates the *Luber* and *Jurdil* principle and the democratic principle in Direct Election which in turn will create a space of political transaction between the PPL/PPK officers and Candidate Pair Team or individual Candidate Pairs;

That, in addition, since the beginning, the supporting process for independent candidates was conducted openly, either by the candidates, their team, or their supporters so that impressed there is something concealed, if at the final stage this process is conducted closely, namely not announced to public. Even if this norm is intended to avoid potential social conflict in the community due to matter of difference of political choice in the Regional head election, thought in fact since the Court issued a ruling that allows nomination of independent candidates, no social conflict have occurred.

That, based on the above reasons, according to the Petitioners, the provision in Article 48 paragraph (9) of Law 10/2016 to the extent of word "**not**", violates the *Luber* and *Jurdil* principle and the democratic principle in a direct election that is guaranteed by the Constitution;

**[3.9]** Considering that in order to support their arguments, the Petitioners submits the documentary/written evidences, marked as Exhibit P-1 through Exhibit P-23, which are completely specified under section the Fact of the Case;

**[3.10]** Considering that, against the aforesaid arguments of the Petitioners, the Parliament, the President, and the Related Parties of the General Election Commission have given verbal statement and has also written statement which is included completely under section the Fact of the Case;

**[3.11]** Considering that after examined carefully the petition of the Petitioners, documentary/written evidences from the Petitioners, verbal statements and written statements from the Parliament, the President, and the Related Parties of KPU, and the written conclusion of the Petitioners, according to the Court, if grouped, then, the articles against which the review is applied for by the Petitioners are provisions that govern:

1. Required number of voters supporting the independent candidates who are registered in the DPT in the previous General Election or Election, as referred to in Article 41 paragraphs (1), (2) and (3) of Law 10/2016;
2. Administrative verification on supports to independent candidates, as referred to in Article 48 paragraph (2) letter b of Law 10/2016;

3. Factual verification period of supports to independent candidates, as specified in Article 48 paragraph (7) of Law 10/2016;
4. Publication/announcement of the factual verification result on support to independent candidates, as referred to in Article 48 paragraph (9) of Law 10/2016;

Based on the legal issues of the Petitioners above, then, subject matters that need to be considered by the Court is whether the required number of voters supporting the independent candidates must be registered in the DPT of previous General Election or Election, administrative verification of the support, factual verification period, and publication of factual verification result contrary to the provisions in the 1945 Constitution?

**[3.12]** Considering that as to the arguments of the Petitioners concerning provision in Article 41 paragraph (1) to the extent of phrase *"and recorded in the permanent list of eligible voters in the last previous general election or election in the relevant region"*, Article 41 paragraph (2) to the extent of phrase *"and included in the permanent list of eligible voters in the relevant region in the general election or the previous last Election in the relevant region"*, and Article 41 paragraph (3) to the extent of phrase *"and included in the Permanent List of Eligible Voters of previous General election in the relevant province or regency/city"*,

are contradictory to the 1945 Constitution, the Supreme Court considers as follows:

**[3.12.1]** That, Article 41 paragraphs (1), (2) and (3) of Law 10/2016 states as follows:

1. *Independent candidates may register themselves to be Governor Candidates and Vice Governor Candidates if fulfill the required number of supports from residents who have the right to vote and recorded in the permanent list of eligible voters in the last previous general election or election in the relevant region, provided that:*
  - a. *provinces with number of residents who are recorded in included in the permanent list of eligible voters up to 2,000,000 (two million) persons must be supported by at least 10% (ten percent);*
  - b. *provinces with number of residents who are recorded in the permanent list of eligible voters of more than 2,000,000 (two million) persons up to 6,000,000 (six million) persons must be supported by at least 8.5% (eight and a half percent);*
  - c. *provinces with number of residents who are recorded in the permanent list of eligible voters of more than 6,000,000 (six million) persons up to 12,000,000 (twelve million) persons must be supported by at least 7.5% (seven and a half percent);*

- d. *provinces with number of residents who are recorded in the permanent list of eligible voters of more than 12,000,000 (twelve million) persons must be supported by at least 6.5% (six and a half percent); and*
  - e. *Number of supports as referred to in letters a, b, c and d shall be distributed in more than 50% (fifty percent) of number of regencies/cities in the relevant Province.*
2. *Independent candidates may register themselves to be Regent Candidate and Candidate Vice Regent, and Candidate Mayor and Vice Mayor if fulfill the required number of supports from residents who have the right to vote and included in the permanent list of eligible voters in the relevant region in the general election or the previous last Election in the relevant region, provided that:*
- a. *regencies/cities with number of residents who are recorded in included in the permanent list of eligible voters up to 250,000 (two hundred and fifty thousand) persons must be supported by at least 10% (ten percent);*
  - b. *regencies/cities with number of residents who are recorded in the permanent list of eligible voters of more than 250,000 (two hundred and fifty thousand) to 500,000 (five hundred thousand) persons must be supported by at least 8.5% (eight and a half percent);*



- c. *regencies/cities with number of residents who are recorded in the permanent list of eligible voters of more than 500,000 (five hundred thousand) up to 1,000,000 (one million) persons must be supported by at least 7.5% (seven and a half percent);*
  - d. *regencies/cities with number of residents who are recorded in the permanent list of eligible voters of more than 1,000,000 (one million) persons must be supported by at least 6.5% (six and a half percent); and*
  - e. *Number of supports as referred to in letters a, b, c, and d shall be distributed in more than 50% (fifty percent) of number of sub-districts/city referred ;;*
3. *Support as referred to in paragraphs (1) and (2) shall be made in the form of letter of support that is accompanied with a photocopy of Electronic Identity Card or a certificate issued by the relevant population service office and civil registry certifying that the relevant resident has been domiciling within the administrative area of the region which is holding the Election for at least 1 (one) year and included in the Permanent List of Eligible Voters of previous General election in the relevant province or regency/city;*

That the provision on required number of voters supporting the independent candidates, as included in the aforesaid article is an amended provision from the old

Election Law, *in casu* Law Number 8 of 2015 regarding Amendment to Law Number 1 of 2015 on Stipulation of Government Regulation In Lieu of Law Number 1 of 2014 on Election of Governors, Regents and Mayors To Become Law (Law 8/2015), Article 41 paragraphs (1), (2) and (3) which require supports to independent candidates based on percentage of total population in the provinces, regencies/cities of relevant regions. Completely, the Article 41 paragraphs (1), (2) and (3) of Law 8/2015 state as follows:

1. *Independent candidates may register themselves to be Governor Candidates and Vice Governor Candidates if fulfill the required supports, provided that:*
  - a. *Provinces with number of residents up to 2,000,000 (two million) persons must be supported by at least 10% (ten percent); 2,000,000 (two million) persons must be supported by at least 10% (ten percent);*
  - b. *Provinces with number of residents more than 2,000,000 (two million) persons up to 6,000,000 (six million) persons must be supported by at least 8.5% (eight and a half percent);*
  - c. *Provinces with number of residents more than 6,000,000 (six million) persons up to 12,000,000 (twelve million) persons must be supported by at least 7.5% (seven and a half percent);*

- d. *Provinces with number of residents more than 12,000,000 (twelve million) persons must be supported by at least 6.5% (six and a half percent); and*
  - e. *Number of supports as referred to in letters a, b, c and d shall be distributed in more than 50% (fifty percent) of number of regencies/cities in the relevant Province;*
2. *Independent candidates may register themselves to be Regent Candidate and Candidate Vice Regent, and Candidate Mayor and Vice Mayor if fulfill the required supports, provided that:*
- a. *Regencies/cities with number of residents up to 250,000 (two hundred and fifty thousand) persons must be supported by at least 10% (ten percent);*
  - b. *Regencies/cities with number of residents more than 250,000 (two hundred and fifty thousand) to 500,000 (five hundred thousand) persons must be supported by at least 8.5% (eight and a half percent);*
  - c. *Regencies/cities with number of residents more than 500,000 (five hundred thousand) up to 1,000,000 (one million) persons must be supported by at least 7.5% (seven and a half percent);*
  - d. *Regencies/cities with number of residents more than 1,000,000 (one million) persons must be supported by at least 6.5% (six and a half percent); and*

- e. *Number of supports as referred to in letters a, b, c, and d shall be distributed in more than 50% (fifty percent) of number of sub-districts in the relevant regency/city;*
3. *Support as referred to in paragraphs (1) and (2) shall be made in the form of letter of support that is accompanied with photocopies of Electronic Identity Card, family cards, passport, and/or other identification in accordance with the provisions of statutory regulations;*
4. *... etc.;*

**[3.12.2]** That, in relation to provision on required supports to independent candidates as referred to in Article 41 paragraphs (1), (2) and (3) of Law 8/2015, the Court in the Judgment Number 60/PUU-XIII/2016, dated September 29, 2016, has awarded ruling with the injunction, among others, as follows:

- 1.1. *Declaring the Article 41 paragraph (1) letters a, b, c, and d of Law Number 8 of 2015 regarding Amendment to Law Number 1 of 2015 on Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 Regarding Election of Governors, Regents and Mayors to Become Law (State Gazette of the Republic of Indonesia of 2015 Number 57, Supplement to State Gazette of the Republic of Indonesia Number 5678) is contradictory to the Constitution of the Republic of Indonesia of*

1945 to the extent not construed that the calculation of support percentage for individual candidates who intends to register his-/herself to be Governor Candidate and Vice Governor Candidate based on number of residents who have had the right to vote as contained in the permanent list of potential electoral voters in the previous General Election;

1.2. Declaring the Article 41 paragraph (1) letters a, b, c, and d of Law Number 8 of 2015 regarding Amendment to Law Number 1 of 2015 on Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 regarding Election of Governors, Regents And Mayors to become Law (State Gazette of the Republic of Indonesia of 2015 Number 57, Supplement to State Gazette of the Republic of Indonesia Number 5678) has no binding legal force to the extent not construed that the calculation of support percentage for individual candidates who intends to register his-/herself to be Governor Candidate and Vice Governor Candidate based on number of residents who have had the right to vote as contained in the permanent list of potential electoral voters in the relevant region in the previous General Election;

1.3. Declaring the Article 41 paragraph (2) letters a, b, c, and d of Law Number 8 of 2015 regarding Amendment to Law Number 1 of 2015 on Stipulation of Government

*Regulation in Lieu of Law Number 1 of 2014 Regarding Election of Governors, Regents and Mayors to Become Law (State Gazette of the Republic of Indonesia of 2015 Number 57, Supplement to State Gazette of the Republic of Indonesia Number 5678) is contradictory to the Constitution of the Republic of Indonesia of 1945 to the extent not construed that the calculation of support percentage for individual candidates who intends to register his-/herself to be Regent Candidate and Vice Regent Candidate, and Mayor Candidate and Vice Mayor Candidate based on number of residents who have had the right to vote as contained in the permanent list of potential electoral voters in the relevant region in the previous General Election;*

- 1.4. *Declaring the Article 41 paragraph (2) letters a, b, c, and d of Law Number 8 of 2015 regarding Amendment to Law Number 1 of 2015 on Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 regarding Election of Governors, Regents And Mayors to become Law (State Gazette of the Republic of Indonesia of 2015 Number 57, Supplement to State Gazette of the Republic of Indonesia Number 5678) has no binding legal force to the extent not construed that the calculation of support percentage for individual candidates who intends to register his-/herself to be*

*Regent Candidate and Vice Regent Candidate, and Mayor Candidate and Vice Mayor Candidate based on number of residents who have had the right to vote as contained in the permanent list of potential electoral voters in the relevant region in the previous General Election;*

**[3.12.3]** That the judgment of the Constitutional Court Number 60/PUU-XIII/2015 the injunction of which is as described above, is not intended to restrict the right of every citizen in giving their support to someone who will nominate him-/herself to be independent candidate in the election of Governor Candidates and Vice Governor Candidates, Regent Candidates and Vice Regent Candidates, as well as Mayor Candidates and Vice Mayor Candidates. The phrase "*as included in the permanent list of potential electoral voters in the relevant region in the previous General Election*" is merely intended as a criterion that is vis-à-vis with criteria of number of residents as previously specified in the norm of Law Number 8 of 2015 for legal certainty. However, that phrase is in no way intended to preclude the right of a citizen to support an independent candidate the relevant citizen is legally eligible to exercise his right to vote (for example, has reach the required age, changes his domicile, retired for TNI / Polri, etc.), thus, even though in the previous election the relevant citizen was not or has not been included

in the permanent list of eligible voters in the relevant region, that citizen must still be guaranteed for his right to give support to someone who wants to nominate him-/herself to be an independent candidate.

That the spirit of the Constitutional Court Judgment No.60/PUU-XIII/2015 is to protect the constitutional rights of citizens is also evident from the assertion of the legal considerations of the decision as referred to in paragraph [3.15.4] which states, "... so that there is legal certainty as well as fulfilling the principle of equality before the law and does not preclude the right to equal opportunities in the government, the Court argued that the basis of calculation to determine the percentage of support for citizens who want to compete in the regional head and vice regional head must use the number of people who have had the right to select which in this case is represented in the list potential electoral voters remained in each of the areas concerned. Referred to register potential electoral voters remain in this relationship is the permanent list of potential electoral voters at the previous General Election ".

Thus the ruling of the Constitutional Court Number 60/PUU-XIII/2015, in particular the phrase "*as included in the permanent list of potential electoral voters in the relevant region in the previous General Election*" Should not be understood solely textually but must consider the spirit of the above, that is not the name recorded in the DPT but on the



number of people who have registered as voters as the basis for calculating the percentage of support for independent candidates. For the right to support or support is a fundamental right which has been accepted as the constitutional rights of citizens as well as the right to vote and the right to choose from, so compliance should be ensured in accordance with the mandate of the Constitution.

**[3.12.4]** That the issue of the right to give support to the independent candidate in addition to the constitutional rights as described above are also part of the democratic process that requires the widest possible space for people to participate in the process. It has confirmed the Court in several decisions, among others, the Constitutional Court Judgment Number 33/PUU-XIII/2015, dated July 8, 2015, which was reaffirmed in the Constitutional Court Judgment Number 60/PUU-XIII/2015, dated 29 September 2016. in paragraph [3.14.1] Constitutional Court Judgment Number 60/PUU-XIII/2015, inter alia, said:

*"[3.14.1] ... constitution mandated local elections (governors, regents, mayors) are held democratically. Thus, the local elections have to fulfill the rules and principles of democracy. Although there was no universally accepted parameters regarding the size of their democratic an election, the essence of democracy which requires the involvement of as many people's participation in political*

*decision-making must be a spirit in formulating legal norms devoted to regulating the conduct of a democratic election that. Thus the essence of democracy which requires the opening of the space as possible for the people in realizing participation or participation in the democratic process. The involvement of the widest people is ideal manifestation of democracy that in fact is the people who have taken the decision about what is best to be applied to him. Participation or the participation of the people the widest it is not solely measured by how much involvement of the people (who have had the right to vote) in using their right to vote (right to vote) but also from their participation in using their right to choose or nominate in the electoral process (right to be candidate). This is one manifestation or plural form of deliberative democracy imposed in various countries whose goal is to complete deficiency that occurs in the model of representative democracy (representative democracy), particularly his tendency to be elitist. Therefore,*

**[3.12.5]** That the span of the administration of elections/Election before until the next Election, pursuant to logical reasoning will change voters' data caused, among other things, i) there are voters who on Election/Electoral previously not/is not registered in the DPT; ii) at the actual voters are qualified to vote on Election/Elections before, but

voters *a quo* has not been registered in the DPT; iii) there are registered voters in Election/Elections earlier but voter *a quo* have died, changed address, or elector of newcomers from other regions. Therefore, if the requisite support a population of the independent candidates that applied restrictions only to voters whose names are included in the Election DPT/Elections before it will be many people who have had the right to vote can not provide support for independent candidates, so that was out of the essence included in the Court's judgment. The more so if considering the Constitutional Court Judgment Number 102/PUU-VII/2009, dated July 6, 2009, that population had the right to vote are not registered in DPT in Election/Elections can also exercise their right to vote by showing identity card or passport along used at the polling station where the concerned resident (see further Constitutional Court Judgment Number 102/PUU-VII/2009, dated July 6, 2009).

**[3.12.6]** Whereas based on the above considerations, the Court is of the opinion that the phrase "and contained" in Article 41 paragraph (1) and paragraph (2), as well as the phrase "and listed" in Article 41 paragraph (3) of Law 10/2016 does not needs to lead to different interpretations because by referring to the Judgment of the Constitutional Court Number 60/PUU-XIII/2015, dated September 29, 2016, the Court's intention is clear that the phrase "*fulfill the required*

*number of supports from residents who have the right to vote and recorded in the permanent list of eligible voters in the last previous general election or election in the relevant region*" in Article 41 paragraph (1), phrase *"and included in the permanent list of eligible voters in the relevant region in the last previous general election or election in the relevant region"* in Article 41 paragraph (2), and phrase *"and included in the Permanent List of Eligible Voters of previous General election in the relevant province or regency/city"* in Article 41 paragraph (3) of Law 10/2016 refers to number of residents who have the right to vote, rather than to the names of people or residents whose identities are included or recorded in the permanent list of eligible voters (DPT) in the previous General Election/Election. Therefore, there is no reason to argue that the Petitioners are potentially disadvantaged because, as long as the relevant percentage is met in accordance with the DPT in the previous General Election/Election even though the names or identities of the supporters of the relevant independent candidates are not the same as those included or recorded in the DPT in the previous General Election/Election, this cannot be used by the election organizer as a reason to reject the validity of support of relevant person to the independent candidate in the verification process.

[3.12.7] That, Based on the considerations above, the Court is on the opinion that the Petitioner's arguments, to the extent concern with phrase "**and included**" in the Article 41 paragraphs (1) and (2), and phrase "**and recorded**" in the Article 41 paragraph (3) of Law 10/2016 is founded according to law un part and do not have binding legal force to the extent not construed as **not referring to the names included/recorded in the DPT, but to number of residents who have had the right to vote;**

[3.13] Considering that, further, the Petitioners argued that the provision in Article 48 paragraph (2) letter b of Law 10/2016, stating, "*Administrative verification as referred to in paragraph (1) shall be carried out by means of: a. ...; b. based on the Permanent List of Eligible Voters of the last general election and List of Potential Electoral Voters from the Ministry of Home Affairs*" is contradictory to the 1945 Constitution..

As to the arguments of the Petitioners a quo the Court is of the opinion that the norm of Article 48 paragraph (2) letter b of Law 10/2016 can not be separated from the norm of Article 48 paragraph (2) letter a and Article 48 paragraph (1) of Law 10/2016 which substantially governs the verification of validity of independent candidate pair supporters, rather than verification of fulfillment of the required percentage of supports to independent candidates as referred to in Article

41 of Law 10/2016 which has been considered by the Court in paragraph [3.12] above. Therefore, the Petitioners' argument that relates the Article 48 paragraph (2) letter b of Law 10/2016 to the fulfillment of the required percentage of supports to independent candidate pairs is not relevant, so that that petition of the Petitioners is legally groundless.

[3.14] Considering that against the arguments of the Petitioners concerning provision in Article 48 paragraph (7) of Law 10/2016 stating, "*Factual verification as referred to in paragraph (4) and paragraph (5), on the candidate's supporter who can not be met during the factual verification period, the candidate pair shall be given with opportunity to present the relevant supporters in the office of the PPS not later than 3 (three) days as of the PPS fails to meet such supporters*" is contradictory to the 1945 Constitution, the Court considers as follows:

[3.14.1] That after examined carefully the petition of the Petitioners' arguments that are made reason in the application for judicial review of Article 48 paragraph (7) of Law 10/2016, really the main problem faced by the Petitioners is not caused by the unconstitutionality of the norm in article *a quo*, but, is the implementation/enforcement of the norm of the relevant article. This is seen obviously from the arguments of the Petitioners stating, "...the series of factual

verification process for 14 days that was conducted by PPS/PPL in the field, none knew its schedule in detail about whom to be meet or which supporters were sought to be met, but the PPS/PPL themselves. .... determination of who will be met first or later is the authority or the will of the officer himself. Voters did not know the exact schedule of when the PPL/PPS officer would come to see him within such a 14 days period. .... arrangement of this technical issue actually should not be made and included in an Law, but will be sufficient if specified in the KPU technical regulation, which allows flexibility of implementation in the filed in accordance with condition and circumstance of the region that is very different between one and others in this country of plurality". Thus, really, the problem being faced by the Petitioners is not caused by the lack of time in the factual verification process against the independent candidate supporters who can not be met by the PPS. Moreover, even if the petition of the Petitioners a quo is granted by the Court, quod non, and the article a quo is construed "not later than three days as of the 14 days period as referred to in Article 48 paragraph (3) lapses", this will not be able to restore the constitutional right of the Petitioners. Because, no matter how long the time is given for factual verification against the independent candidate supporters who can not be met by PPS, if the problem is because the voters do not know the schedule for the PPL/PPS officers meeting them, then the

separation/granting of 3 (three) days for factual verification of individual candidate supporters who cannot be found by the PPS beyond the 14 (fourteen) days period of factual verification, will not have any effect on the independent candidate supports;

**[3.14.2]** That in relation to existence of Article 48 paragraph (7) of Law 10/2016, the Related Parties of KPU in its testimony before the court on September 15, 2016 and its written statement dated September 5, 2016 stated that in relation to the matter in the article *a quo* KPU has made a policy on procedures of factual verification on support to independent candidate pairs as referred to in Article 24 of the General Election Commission Regulation Number 5 of 2016 regarding Second Amendment to the Election Commission Regulation Number 9 of 2015 regarding Nomination of Candidates for Election of Governors and Vice Governors, Regents and Vice Regents, and/or Mayors and Vice Mayors, which essentially states, *"PPS conducts factual verification by directly visiting supporters of candidate pairs. If the supporters can not be met by PPS in the factual verification, PPS shall coordinate with Prospective Candidate Pairs and/or the liaison team of Prospective Candidate Pairs shall be given with opportunity to present the relevant supporters in village or sub-district areas at the predetermined places not later than 3 (three) days as of the supporter can not be met in order to*



*verify and examine the truth of the supports. Further, if the Prospective Candidate Pairs and/or the liaison teams of Prospective Candidate Pairs fails to present the supporters in question, then the supporters are still given with an opportunity to directly visit the PPS in order to prove their support at the latest before the end of factual verification period. If until the expiry of factual verification period, the Prospective Candidate Pair fails to present their supporter, then the support is declared ineligible". Thus, it has become increasingly clear that this is not a matter of constitutionality of norm, but rather a matter of implementation of norm of Law, therefore, the Court is of the opinion that the Petitioners' petition concerning the review of Article 48 paragraph (7) of Law 10/2016 is legally groundless.*

**[3.15]** Considering, as to the argument of the Petitioners which argues that the word "not" in the provision in Article 48 paragraph (9) of Law 10/2016 is contradictory to the 1945 Constitution, the Court considers as follows:

That, based on written statement of the House of Representatives, it can be known the reason of Legal drafters not opening the announcement of the verification result in the Law *a quo* because the government disagreed that the factual verification is opened to the public for reason of worrying the openness to announce the support for independent

candidates to the public would result in chaos in the community. The House of Representatives in its statement agrees with the Petitioners that the result of factual verification on the supporters of independent candidates is announced to the public in accordance with the transparency principle which so far has been very difficult to be proven for validity because frauds frequently occurred relating to that;

Thus, in this regard, the Court must consider, on the one hand, the right to receive information is a constitutional right that is guaranteed by the 1945 Constitution and elaborated further in Law Number 14 of 2008 regarding Disclosure of Public Information, while on the other hand the confidentiality of support and choice of someone in General Election/Election is an important principle that is guaranteed by the 1945 Constitution, as elaborated in various Laws that govern or relate to General Election/Election, because directly relating with the right of political choice and therefore can not be breached. Thus, therefore, the problem is how to balance the both constitutional rights. In this case, the Court is of the opinion the result of factual verification on independent candidate supports must still be announced to the public but limited to number of supports that meet the requirement of independent candidates, rather than announcing the names of supporters of the independent candidate in question. Therefore, the right and information are fulfilled

and at the same time the confidentiality of political choice and support as someone in accordance with their political belief is remain guaranteed.

Concerning the Petitioners' anxiety on the possibility of manipulation of independent candidate supporter data, the Court is of the opinion that if based on the result of factual verification of independent candidates supporters which has been announced, a mistake is suspected, the relevant independent candidates may ask for clarification from the KPU under supervision of Bawaslu. Therefore, the Petitioners' argument that the word "not" in the Article 48 paragraph (9) of Law 10/2016 is contradictory to the 1945 Constitution is legally founded in part, namely to the extent of word "not" in the norm of Law *a quo* is not construed as include the names of supporters of independent candidates;

**[3.16]** Considering that based on all the considerations above, the Court is of the opinion the Petitioners' petition is legally founded in part.

#### **4. CONCLUSIONS**

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

[4.1] The Court is competent to adjudicate the Petitioners' petition;

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

[4.3] **The** Petitioners' arguments are legally founded in part;

Based on the Constitution of the Republic of Indonesia of 1945, Law Number 24 of 2003 regarding the Constitutional Court, as amended by Law Number 8 of 2011 on Amendment to Law Number 24 of 2003 regarding the Constitutional Court (State Gazette of the Republic of Indonesia of 2011 Number 70, Supplement to State Gazette of the Republic of Indonesia Number 5226), and Law Number 48 of 2009 regarding Judicial Power (State Gazette of the Republic of Indonesia of 2009 Number 157, Supplement to State Gazette of the Republic of Indonesia Number 5076);

## 5. INJUNCTION

### **Adjudicates,**

- (1) Granting the Petitioners' petition in part;
- (2) Declaring the phrase "*and included*" in the Article 41 paragraphs (1) and (2) of Law Number 10 of 2016 regarding the Second Amendment to Law Number 1 of 2015 on Stipulation of Government Regulation in Lieu of Law Number

1 of 2014 regarding Election of Governors, Regents and Mayors to become Law" (State Gazette of the Republic of Indonesia of 2016 Number 130, Supplement to State Gazette of the Republic of Indonesia Number 5898) is contradictory to the Constitution of the Republic of Indonesia of 1945 and has no binding legal force, to the extent not construed as **not referring to the names included/recorded in the DPT, but to number of residents who have had the right to vote;**

- (3) Declaring the phrase "*and included*" in the Article 41 paragraph (3) of Law Number 10 of 2016 regarding the Second Amendment to Law Number 1 of 2015 on Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 regarding Election of Governors, Regents and Mayors to become Law (State Gazette of the Republic of Indonesia of 2016 Number 130, Supplement to State Gazette of the Republic of Indonesia Number 5898) is contradictory to the Constitution of the Republic of Indonesia of 1945 and has no binding legal force, to the extent not construed as **not referring to the names included/recorded in the DPT, but to number of residents who have had the right to vote;**

- (4) Declaring the word "*not*" in the Article 48 paragraph (9) of Law Number 10 of 2016 regarding the Second Amendment to Law Number 1 of 2015 on Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 regarding Election of Governors, Regents and Mayors to become Law

(State Gazette of the Republic of Indonesia of 2016 Number 130, Supplement to State Gazette of the Republic of Indonesia Number 5898) is contradictory to the Constitution of the Republic of Indonesia of 1945 and has no binding legal force, to the extent of the word "not" in the relevant article is construed as **names of supporters of independent candidates;**

(5) Declining the Petitioners' petition for the rest;

(6) Ordering publication of this judgment in the Official Gazette of the Republic of Indonesia accordingly;

In witness whereof, this award is decided in the Consultative Meeting of Judges by nine Constitutional Court Judges, namely Arief Hidayat as the Chairperson and concurrent Member, Anwar Usman, Maria Farida Indrati, Wahiduddin Adams, Suhartoyo, Aswanto, I Dewa Gede Palguna, Manahan M.P Sitompul, and Saldi Isra, respectively as Members, on **Wednesday, the seventh day of June two thousand and seventeen**, uttered in Plenary Meeting of the Constitutional Court opened for public on **Wednesday, the fourteenth day of June two thousand seventeen**, the utterance finished at **9.10 WIB**, by the nine Constitutional Court Judges, namely Arief Hidayat as Presiding Judge concurrently acting as Member, Anwar Usman, Maria Farida Indrati, Wahiduddin Adams, Suhartoyo, Aswanto, I Dewa Gede Palguna, Manahan M.P Sitompul, and Saldi Isra, respectively as Members, accompanied by Dian Chusnul Chatimah as Substitute Registrar, and in the presence of the Petitioners/their

proxies, the President or his representative, and the House of Representatives or its representative.

**CHAIRMAN,**

**Signed**

**Arief Hidayat**

**MEMBERS,**

**Signed**

**Anwar Usman**

**Signed**

**Maria Farida Indrati**

**Signed**

**Wahiduddin Adams**

**Signed**

**Suhartoyo**

**Signed**

**Aswanto**

**Signed**

**I Dewa Gede Palguna**

**Signed**

**Manahan MP Sitompul**

**Signed**

**Saldi Isra**

**SUBSTITUTE COURT CLERK,**

**Signed**

**Dian Chusnul Chatimah**