DECISION
NUMBER 49/PUU-XIV/2016

FOR THE SAKE OF JUSTICE BASED ON THE ONE AND ONLY GOD
THE CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA

[1.1] Adjudicating the Constitutional case at the first and final instance, handing its ruling in the case of Review on the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations against the Constitution of the Republic of Indonesia of 1945, submitted by:

Name : **Mustofa, S.H.**
Occupation : *Ad hoc* Judge at the Court of Industrial Relations
Address : Pandisari RT/RW: 003/008, Village (*Kelurahan/Desa*) Sawo Sub-Regency (*Kecamatan*) Kutorejo, Regency (*Kabupaten*) Mojokerto

In this case based on a Special Power of Attorney, dated 19 May 2016, granting a power of attorney to **Nova Harmoko, S.H., and Ahmad Fauzi, S.H., M.H.,** Advocates with the Law firm **Harmoko & Partners**, having its address at Jalan Margonda Raya Number 19C, the City of Depok (Kota Depok), either jointly or severally, acting for and on behalf of the grantor of the power of attorney;
Hereinafter referred to as ---------- **the Petitioner;**

[1.2] Reading the petition of the Petitioner;
Hearing the testimony of the Petitioner;
Hearing and reading the testimony of the President;
Reading the testimony of the People's Representative Council (*Dewan Perwakilan Rakyat*, hereinafter the "Parliament");
Hearing and reading the testimony of the Related Parties;
Hearing and reading the testimony of the expert of the Petitioner and of the Related Parties;
Hearing the testimony of the witness of the Petitioner;
Examining the evidences of the Petitioner and of the Related Parties;
Reading the conclusion of the Petitioner and of the Related Parties;

2. STATE OF THE CASE

[2.1] Considering whereas the Petitioner has submitted a petition by a letter of petition dated 24 May 2016, received by the Office of the Clerk of the Constitutional Court (hereinafter referred to as the Office of the Clerk of the Court) on the date 1 June 2016 based on the Deed of Receipt of the Dossier of the Petition Number 102/PAN.MK/2016 and which has been registered in the Book of Registry of Constitutional Cases under Number 49/PUU-XIV/2016 on the date 20 June 2016, which has been corrected and received at the Office of the Clerk of the Court on the date 26 July 2016, describing matters which in essence are as follow:

I. THE CONSTITUTIONAL COURT IS AUTHORIZED TO EXAMINE, TO ADJUDICATE AND TO JUDGE ON THIS PETITION

1. Whereas the Petitioner herewith submits a petition so as to request the Constitutional Court to review a Law, namely to review the norms of a law in Article 67 section (2) of the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations (Supplement to the Gazette of the Republic of Indonesia Number 4356) (the PPHI Law), against the Provision of Article 24 section (1), Article 27 section (1) and (2), and Article 28D section (1) of the Constitution of the Republic of Indonesia of 1945.

2. Whereas the provision of Article 24C section (1) of the Constitution of 1945 states that the Constitutional Court is authorized to adjudicate at the first and final instance, which ruling is final to review a Law against the Constitution.
3. Article 10 section (1) letter a of the Law Number 24 of 2003 regarding the Constitutional Court as has been amended by the Law Number 8 of 2011 regarding the Amendment to the Law Number 24 of 2003 regarding the Constitutional Court **(evidence of P-5)** confirming the same matter, namely mentioning that the Constitutional Court is authorized to adjudicate at the first and final instance, the decision of which is final, among others "to review laws against the Constitution of the Republic of Indonesia of 1945."
4. Whereas a resembling confirmation as has been described in figure 2 herein-above, has also been raised by the Law Number 48 of 2009 regarding general judiciary stating that: "the Constitutional Court is authorized to adjudicate at the first and final instance, the decision of which is final to" among others "to review laws against the Constitution of the Republic of Indonesia of 1945." While the provision of Article 9 section (1) of the Law Number 12 of 2011 regarding the Formation of Laws and Regulations states: "In case a Law is assumed to be contrary to the Constitution of the Republic of Indonesia of 1945, its review is conducted by the Constitutional Court";
5. Based on the description under figure 1 through 3 herein-above, the Petitioner concluded that the Constitutional Court is authorized to adjudicate a petition to review this law at the first and final instance, the decision of which is final.

II. THE PETITIONER HAS LEGAL STANDING TO SUBMIT THIS PETITION

1. Whereas Article 51 section (1) of the Law Number 24 of 2003 regarding the Constitutional Court as has been amended by the Law Number 8 of 2011 regarding the Amendment to the Law Number 24 of 2003 regarding the Constitutional Court mentions that the petitioner for the review of a Law shall be "a party who assumes that his/her constitutional rights and authorities have been harmed by the enactment of a law" which under letter a mentions that he/she shall be an "Indonesian individual citizen." Furthermore, the Elucidation to Article 51 section (1) of the Law as such (*a quo*), mentioned that understood by "constitutional rights" are "rights as regulated by the Constitution of the Republic of Indonesia of 1945";
2. Whereas the Permanent Jurisprudence of the Constitutional Court as set out in the Ruling Number 006/PUU-III/2005 in conjunction with the Ruling Number 11/PUU-V/2007 and further judgments has rendered a cumulative understanding and definition regarding what is understood by "constitutional loss" by the enactment of norms of a Law, namely: (1) The existence of constitutional rights of the Petitioner granted by the Constitution of the Republic of Indonesia of 1945; (2) Whereas those constitutional rights are assumed by the Petitioner to have been harmed by a Law to be reviewed; (3) The loss of those constitutional rights and/or authorities are specific and actual, or at least bears the potential which can be ascertained according to normal reasoning that it will happen; (4) The existence of causal relations (Dutch: *causal verband*) between a loss and the enactment of a law petitioned for review; and (5) The existence of the possibility that by the granting of the petition, the postulated constitutional will not happen or will not happen again;
3. Whereas this petition to review is conducted by the petitioner as an "Indonesian individual citizen" in his position as *ad hoc* judge at the Court of Industrial Relations (*Pengadilan Hubungan Industrial*, PHI) having granted his power of attorney to the Office of Advocates Harmoko and Partners as a legal entity rendering legal aid, non-litigation wise as well as litigation wise at court.
4. Whereas the Petitioner as *ad hoc* judge at the Court of Industrial Relations as a judge being an enforcer of Judicial Powers, which powers are independent to perform the judiciary to uphold law and justice as regulated by Article 24 section (1) of the Constitution of 1945, whose position as a judge is as regulated by Article 19 of the Law Number 48 of 2009 regarding Judicial Powers which declares that: "*judges and constitutional justices are state officials performing Judicial Powers as regulated by the laws*". The Judicial Powers as performed by *ad hoc* judges particularly permanent judges at the Courts of Industrial Relations (PHI) execute the powers of a judge in examining and to rule on cases regarding disputes of

industrial relations. Therefore, based on that reason it is obvious and reasoned if the Principal Petitioner has constitutional rights based on the Constitution of 1945 related to the position of an *ad hoc* judge at the Court of Industrial Relations (PHI), Article 24A section (5) of the Constitution of 1945 regulates that "the composition, position, membership, and procedural law of the Supreme Court (*Mahkamah Agung*, MA) and the judiciary bodies beneath it be regulated by Laws.

5. Whereas afterwards the Court of Industrial Relations which formation is based on the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations, whereby the spirit of its formation is among others to accelerate settlement processes of disputes arising between workers and entrepreneurs in industrial relations, thereby one can draw the conclusion based on that Law Number 2 of 2004, that *ad hoc* judges, particularly judges at the Courts of Industrial Relations (PHI) have constitutional rights like judges in general. That can be seen based on the provision of Article 31 section (1) of the Law Number 48 of 2009 regarding Judicial Powers stating that "*court judges beneath the Supreme Court are state officials performing* Judicial Powers *being with the judiciary bodies beneath the Supreme Court*", *ad hoc* judges at the Courts of Industrial Relations (PHI) are subject to Article 63 up to Article 73 of the Law Number 2 of 2002 regarding the Settlement of Disputes on Industrial Relations.
6. Whereas in performing those independent Judicial Powers to perform the judiciary to uphold law and justice, the provision in the article related to the provision of Article 67 section (2) of the Law Number 2 of 2004 regarding the Settlement of Industrial Disputes determines the periodization of the tenure of *ad hoc* judges at the Courts of Industrial Relations (PHI) for 5 years and which can be extended for 1 (one) more tenure.
7. Whereas the Principal Petitioner has assumed the above-mentioned provision very harmful for the Petitioner as an *ad hoc* judge at the Court of Industrial Relations (PHI) because it is contrary to the Constitution of 1945 and the Law Number 48 of 2009 regarding the Amendment to the Law Number 14 of 1970, whereby that Law **HAS NEVER REGULATED OR DETERMINED A NORM RELATED TO THE PERIODIZATION OF JUDGES IN THE ENVIRONMENT OF THE JUDICIARY AS WELL AS UNDERNEATH THE SUPREME COURT**, so that norm is deemed to be a delegated norm by discretion or has surpassed its basic regulation, namely Article 24 section (1), Article 27 section (1) and section (2), and Article 28D section (1).
8. Whereas that periodization of the tenure of *ad hoc* judges at the Courts of Industrial Relations (PHI) has given rise to problems in the system of the appointment and the dismissal of *ad hoc* judges at the Courts of Industrial Relations (PHI), particularly related to the sustainability of the settlements, examinations, to examine, to adjudicate and to rule on cases regarding disputes of industrial relations, which should render equitable protection for laborers, workers, and the government.
9. Whereas this periodization of the tenure will also raise career uncertainty as judges at the Courts of industrial relations, whereby their recruitment pattern is subject to a stringent and selective process in the form of ability test, the education of candidate *ad hoc* judges and also the education of *ad hoc* judges, besides, it also involves the process of endorsement of office by the President by virtue of a Presidential Decree for its confirmation and also the role of the Supreme Court and the Judicial Commission as its supervisory body. Certainly, the Principal Petitioner expects that the period of time will not be limited by periodization like in the case of the judges in general.
10. Whereas the implementation of this article creates loss of constitutional rights of *ad hoc* judges at the Courts of Industrial Relations (PHI), namely which is related to the independence of the judge being the constitutional rights of *ad hoc* judges at the Courts of Industrial Relations (PHI) in the frame of examining and to rule on cases regarding disputes of industrial relations, and the absence of equality in law and equal treatment before the law related to the periodization of the tenure of *ad hoc* judges at the Courts of Industrial Relations (PHI), whereby it can already be ascertained that it will lead to constitutional loss of Indonesian citizens particularly of the *ad hoc* judges at the Courts of Industrial Relations (PHI).

11. Whereas a consequence of the enforcement of the provision of Article 67 section (2) of the Law Number 2 of 2004 regarding the Settlement of Industrial Disputes is contrary to the constitutional rights of the Petitioner as regulated by the provision of Article 24 section (1) of the Constitution of 1945, Article 27 section (1) and section (2), and Article 28D section (1) of the Constitution of 1945.
12. Whereas based on the argument as has been described under letter A up to letter K herein-above, the Petitioner concludes, that the Petitioner has the legal standing to submit this petition, based on 5 (five) reasons, namely:
    A. The Petitioner is an Indonesian individual citizen of the Republic of Indonesia;
    B. As a citizen, the Petitioner has constitutional rights, which norms have been regulated and granted by the Constitution of 1945, namely constitutional rights as an *ad hoc* judge, which provisions have been regulated based on the provision of the prevailing law to perform the function of independent judiciary bodies without intervention.
    C. Those constitutional rights of the Petitioner have been obviously, actually and specifically being harmed by the enactment of the norm of Article 67 section (2) of the Law Number 2 of 2004 regarding the Settlement of Industrial Disputes.
    D. That constitutional loss has obviously raised a Loss of constitutional rights which is Specific and Actual, or At Least Bears the Potential, which Can be Ascertained According to Normal Reasoning that It Will Happen. In the Article Under Review and according to normal reasoning There is the Possibility that by the Granting of the Petition, the Postulated Loss of constitutional rights Will Not Happen or Will Not Happen Again.
    E. By virtue of a ruling of the Constitutional Court which is expected to grant the petitum of this petition, the Petitioner expects that the mentioned constitutional loss of the Petitioner will not happen;

III. The Reasons of the Petitioner to File the Petition to Review Article 67 section (2) of the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations

1. Regarding the Permanent Position of *ad hoc* Judges in Disputes of Industrial Relations (PHI) at the Court of Industrial Relations as a Form of Independent Judicial Powers

A. The Court of Industrial Relations as established by virtue of the provision of the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations is intended to settle disputes arising between workers and entrepreneurs in industrial relations, whereby the Court of Industrial Relations has its seat in the District Court in each provincial capital city in all over Indonesia and at the level of cassation and re-consideration (*peninjauan kembali*) is conducted by the Supreme Court, which composition of the Tribunal of Judges comprises judges from elements of entrepreneurs and workers (non-career judges at the Courts of Industrial Relations (PHI)) bearing the title of " *ad hoc* judges" at the Courts Of Industrial Relations at the District Courts and *ad hoc* judges at the Courts of Industrial Relations at the Supreme Court.

B. Related to the meaning of the word " *ad hoc* " for *ad hoc* judges at the Courts of Industrial Relations, the understanding of " *ad hoc* " as temporary judiciary body is erroneous and inappropriate, because the legal meaning of the word " *ad hoc* " refers to judiciary bodies of temporary nature, having the expertise and experience in certain fields to examine, to adjudicate and to judge on a case, like in the matter of *ad hoc* judges at the Commercial Court and Taxation Judges, whereby the presence of the *ad hoc* Commercial Court judges or the *ad hoc* taxation judges are indeed needed to judge on taxation cases and commercial cases, whereby those cases need special expertise, so that the presence of *ad hoc* taxation judges and *ad hoc* judges in commerce are indeed not fixed.

C. Whereas the provision of the Law Number 14 of 2002 regarding the Tax Court in Article 9 declares that: (evidence of P-8):

Section (2): In the examination and to rule on certain tax disputes the chair may appoint *ad hoc* judges as members.

Section (3): to be appointed as *ad hoc* judge, one shall comply with the requirements as mentioned in section (1) save to letter b and letter f.

D. The provision of Article 135 of the Law Number 5 of 1986 regarding State Administrative Judiciary, states that (evidence of P-9):
   Section (1)*: "In case a Court examines and decides on certain State Administration cases requiring special expertise, then the chair of the court may appoint an ad hoc* judge *as a member of the tribunal."*
   Section (2*): "one shall comply with the requirements as mentioned in Article 14 (1) save to letter e and letter f in order to be appointed as an ad hoc judge"*.
   Section *(3): "the prohibition as mentioned in Article 18 (1) letter c does not apply to ad hoc judges"*.
   Section *(4):* "the procedure of *the appointment of an ad hoc* judge *at a court as mentioned in section (1) shall be regulated by Government Regulation."*

E. The provision of the Law Number 37 of 2004 regarding Bankruptcy and Suspension of Debt Payment, Article 283 section (3) (evidence of P-10), regulates regarding *ad hoc* judges, as is also regulated by the Supreme Court Regulation (*Peraturan Mahkamah Agung*, PERMA) Number 2 of 2000 regarding the Perfection of Regulation of the Supreme Court Number 3 of 1999, where its Article 1 Section (1) states that (evidence of P-11): "*an ad hoc* judge *is an expert in his/her field appointed by the President at the proposal of Chief Justice of the Supreme Court"*.
   Article 3 section (1) states that*: "an ad hoc* judge *has the task of a member* judge *at a tribunal to examine and to rule on cases of commerce assigned to the respective tribunal"*.

F. Whereas based on the provisions of those laws and regulations mentioned herein-above, one can draw the conclusion that *ad hoc* judges at the Commercial Courts, *ad hoc* judges at Tax Courts and *ad hoc* judges at the State Administration Courts are judges having the temporary task based on certain cases and based on certain expertise only.

G. Whereas *ad hoc* judges at the Courts of Industrial Relations (PHI) have a different character if compared to the other *ad hoc* judges like in the case of *ad hoc* judges at the Courts of Commerce, the Tax Court and the State Administration Courts, *ad hoc* judges at the Courts of Industrial Relations (PHI) have a character of being judiciary bodies having **permanent character and not temporary.** That is implied in the Elucidation to the Government Regulation Number 41 of 2004 regarding the Procedure of the Appointment and Dismissal of *ad hoc* judges at the Courts of Industrial Relations and *ad hoc* judges at the Supreme Court under the third paragraph with the elucidation: ***"ad hoc* judges as regulated by the Law Number 2 of 2004 have a particularity if compared to *ad hoc* judges at the other courts. *ad hoc* judges at the Courts of Industrial Relations and *ad hoc* judges at the Supreme Court are PERMANENT, because the settlement of each case of disputes of industrial relations is conducted by a tribunal of judges with the composition of a career judge as the chair of the tribunal and 2 (two) *ad hoc* judges respectively as members of the tribunal of the judge**.

H. Whereas even according to the international doctrine, the position of *ad hoc* judges at the Courts of Industrial Relations are deemed as permanent judiciary bodies as institutions which adjudicate, examine, and judge on cases regarding disputes of industrial relations, consisting of tripartite elements, namely the element of workers, entrepreneurs, and the government. That is the mandate of the ILO Convention Number 144 of 1976 regarding the Tripartite Constitution and the Presidential Decree Number 29 of 1990 stating that Indonesia as a member of the ILO is bound by that Convention.

I. Whereas this typical character of *ad hoc* judges at the Courts of Industrial Relations (PHI) afterwards has led to a logical fallacy in interpreting the meaning and understanding of the word "*ad hoc" per se*, the wrong interpretation against the word "*ad hoc"* is an illogical form of reasoning supported by wrong premises which is caused by drawing a conclusion which is invalid on arguments forming the premise (the word *ad hoc) per se*.

J. The first logical fallacy is vis-à-vis the understanding of the word "*ad hoc"*. In the *Kamus Besar Bahasa Indonesia* (Grand Dictionary of the Indonesian Language) the word "*ad hoc"* is taken from Latin, which means "for that", therefore, by itself the understanding of

"*ad hoc*" is "for that" and not "temporary" like it is understood to date, according to the laws as well as the already formed public perception. Oliver Wendell Holmes suggested regarding this fallacy, the need of considering the corresponding factual truth, where one shall not implement the law just mechanistic wise as determined in the laws and regulations only, but one should also posit realistically according to the situation in society, thereby not only referring to thoughts of legal justice, but also referring to the reality of social justice. By borrowing this thought of Oliver Wendel Holmes, one should interpret the word "*ad hoc*" not based on the laws only, but also on reality, to avoid logical fallacy. The reality is that *ad hoc* Courts of Industrial Relations (PHI) are not temporary courts, but permanent judiciary bodies to settle disputes of industrial relations.

K. Whereas the second logical fallacy regarding the meaning of "*ad hoc*" is particularly related to the permanent member judges at the Courts of Industrial Relations (PHI), which refer to the provision of Article 63 of the Law Number 2 of 2014 regarding the Appointment of *ad hoc* judges at the Courts of Industrial Relations (PHI), whereby the appointment of *ad hoc* judges equals the mechanism and the procedure of career judges in general. That provision stated that: "*ad hoc* judges at the Courts of Industrial Relations appointed by Presidential Decree at the proposal of the Chief Justice of the Supreme Court". One can interpret this provision that there is no significant difference related to the process of appointment and endorsement of *ad hoc* judges on the one hand and career judges on the other hand, because the recruitment mechanism and the appointment share the same mechanism for both the *ad hoc* judges and the career judges. Therefore, the conclusion can be drawn that *ad hoc* judges are permanent judges whose position equals that of the career judges.

L. Whereas furthermore the third logical fallacy is related to the phrase of Article 67 section (2) of the Law Number 2 of 2004 regarding the Settlement of Industrial Disputes, which determines the periodization of the tenure of *ad hoc* judges at the Courts of Industrial Relations (PHI) for 5 years and which can be extended for 1 (one) more tenure. This is certainly an interpretation of the article which does not render guaranty to independency of the judges. This logical fallacy is committed due to discriminative treatment related to the appointment and retirement of *ad hoc* judges vis-à-vis career judges. To prevent logical fallacy, the retirement age of *ad hoc* judges shall be equalized with the retirement age of career judges, because there is no difference in terms of their position and their appointment with that of the career judges.

M. Whereas those three logical fallacies mentioned herein-above are contrary to the principle of independence of the judge in carrying out powers in the field of the judiciary.

N. Whereas the independent Judicial Powers are an absolute requirement in a state based on law, whereby that independence comprises the independence from intervention of the executive and the legislative powers as well as from the public at large in carrying out their judicative tasks. Three conditions are required to carry out the function of independent powers in order to guarantee the independence of Judicial Powers, namely:
   a. Guaranty for the term of the office of the judge;
   b. Guaranty for finance;
   c. Guaranty for independent administration.

O. Whereas there should be a critical note related to the application of Article 67 section (2) of the Law Number 2 of 2004 regarding the Settlement of Industrial Disputes related to the periodization of the tenure of *ad hoc* judges at the Courts of Industrial Relations (PHI). Periodization does not guarantee the realization of the principle of independence of Judicial Powers. In some modern countries, the tenure of the judge is a permanent office, for life or at least up to the time of retirement, subject to good behavior and non-involvement in crime.

P. Chief justice McLachlan as quoted by Bagir Manan states the long or unlimited tenure is deemed to be one of the essential conditions to guarantee the independence of the judicative powers, in many countries (like England, Canada, the Netherlands) of the tenure of the judge is "during good behavior". In Canada, the understanding of "during good behavior" is up to the age of 75 years and which can only be dismissed by the

Governor General at the resolution of the Parliament (the Senate and the House of Commons). Such is also in the United States, the Supreme Court Justices and inferior judges hold office "during good behavior" but they are entitled to ask for retirement when they reach the age of 70 years. In Germany, judges are appointed for life, but the laws may regulate the age of retirement.

2. **Regarding Discriminative Reason in the Occupation and the Right of Occupation and Decent Life for Judges as Executors of Judicial Powers**
   A. In principle, the Court is the seat of justice, whereby facts are presented and the judge is granted the authority by law to render a ruling on a case. Judges shall be professional in carrying out their function tightly holding on the principles of independence and impartiality of the judiciary.
   B. The Grand Dictionary of the Indonesian Language renders the definition of a judge as a person who adjudicates a case, (in court or higher court), court or assessing jury. The legal dictionary of C.T. Simorangkir, Rudi T. Prasetya and J.T. Prasetyo mentions a judge as an officer of the court adjudicating a case which in Dutch is referred to as a "*rechter*" and in English referred to as "*judge*". While in the *Bangalore Principle of Judicial Conduct* of 2002 a judge is declared as "any person exercising Judicial Powers, however designed". And Richard A. Posner and T. Krooman render an understanding of a judge as a rational administrator and social engineer, which afterwards gradually becomes a lawyer statesperson when he/she becomes appointed as a supreme court justice.
   C. Subsequently in Indonesia Article 31 of the Law Number 4 of 2004 renders a legalistic understanding of a judge as an official playing the role of executing Judicial Powers as regulated by the Laws, this interpretation regarding the meaning of a judge is in line with the thought of Logemann stating that a judge is an *Ambtenaar* or official having the duty and authority to carry out his/her duty of in the judicial field.
   D. The independence of a judge being an independent profession should be assured, as regulated by Article 1 of the Law Number 17 of 1970 which renders assurance of Judicial Powers, which is free from intervention of the other state powers, and freedom from coercion, direction, or extra judicial recommendation, save in matters as regulated by Laws.
   E. Whereas based on the provision of law and the definition related to the above-mentioned word "judge", one can conclude that there is no difference between the meaning of career judges on the one hand and non-career judges as well as *ad hoc* judges on the other hand.
   F. *ad hoc* judges and particularly permanent member judges at the Courts of Industrial Relations (PHI) backed by recommendation from entrepreneurs and workers unions/labor unions, who certainly have different character and capability if compared to judges in general. *ad hoc* judges and particularly permanent member judges at the Courts of Industrial Relations (PHI) are judges who have the capability, professionalism and standard of expertise and intellectual technique acquired thanks to education and long experience in the field of labor affairs.
   G. Whereas thanks to that education and experience, *ad hoc* judges and particularly permanent member judges at the Courts of Industrial Relations (PHI) are people who have the capability and the typical and specific experience in the handling of dispute cases of industrial relations, armed by education and experience enabling *ad hoc* judges and particularly permanent member judges at the Courts of Industrial Relations (PHI) to live up disputes of industrial relations in Indonesia, which are certainly different from disputes of industrial relations in other countries, and it can be ascertained that *ad hoc* judges and particularly permanent member judges at the Courts of Industrial Relations (PHI) have the experience to examine and to rule on disputes of industrial relations submitted to the courts of industrial relations.
   H. Besides, the office of *ad hoc* judges and particularly permanent member judges at the Courts of Industrial Relations (PHI) is an office which is appointed, due to a person's competence as judge like also career judges, whereby to hold office as *ad hoc* judges and particularly permanent member judges at the Courts of Industrial Relations (PHI),

candidates are also subject to selection and the education of a judge like the career judges in general.

I. Based on that description, the office of *ad hoc* judges and particularly permanent member judges at the Courts of Industrial Relations (PHI) is a career office like the office of career judges in general, and is not a political office as appointed and dismissed based on the tenure of periodization of offices which are politically elected and appointed.

J. Whereas *ad hoc* judges are also members of the Indonesian Society of Judges (*Ikatan Hakim Indonesia*, IKAHI) being an evidence of the legality of *ad hoc* judges and particularly permanent member judges at the Courts of Industrial Relations (PHI) are also judges, whose position equals that of the career judges in general.

K. Whereas *ad hoc* judges are also object of examination by the Judicial Commission (*Komisi Yudisial*, KY) as part of the supervision against judges in all over Indonesia, thereby *ad hoc* judges, and particularly permanent member judges at the Courts of Industrial Relations (PHI) are also judges whose position equals that of the career judges in general.

L. Therefore, the meaning of the phrase of Article 67 section (2) of the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations is contrary to the principle of equality in law and government and violates the right of work and decent living based on the provision of Article 27 section (1) and section (2) of the Constitution of 1945. The provision of Article 67 section (2) of the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations is certainly very discriminative and is contrary to the principle of independent Judicial Powers of the judges.

M. The application of this Article 67 section (2) of the Law Number 2 of 2004 regarding Disputes of Industrial Relations is obviously a discriminative act, because there is a limitation to the treatment against *ad hoc* judges at the Courts of Industrial Relations (PHI), if compared to the career judges in general. This principle is contrary to the provision regarding human rights in Article 1 section (3) of the Law Number 39 of 1999 regarding Human Rights which reads: "Discrimination is each limitation, harassment, or isolation which is direct or indirect based on distinction of humans based on religion, tribe, race, ethnic, group, class, social status, economic status, gender, language, political conviction, leading to the reduction, deviation, or elimination, recognition, execution or utilization of the human rights and basic freedoms in life individually as well as collectively in the fields of politics, economy, law, social, culture, and the other aspects of life".

N. Whereas the application of Article 67 section (2) of the Law Number 2 of 2004 regarding Disputes of Industrial Relations is contrary to the provision regarding the prohibition of discrimination mentioned herein-above, which is also regulated by the International Covenant on Civil and Political Rights (ICCPR) which has been ratified by Indonesia by the Law Number 12 of 2005. Article 2 ICCPR which reads: "*Each State Party to the present Covenant undertakes to respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*".

O. Furthermore, the Constitutional Court in its Ruling Number 028-029/PUU-IV/2006 declares that discrimination shall be interpreted as each limitation, harassment, or isolation which is based on distinction of humans based on religion, race, color, gender, language, political unity (political opinion).

P. Whereas a consequence of this discrimination is that *ad hoc* judges, particularly permanent member judges at the Courts of Industrial Relations (PHI) suffer a situation of uncertainty and inequality in carrying out their tenure and their term of dismissal, and which certainly violates the principle of independent Judicial Powers.

Q. Whereas the elimination of discrimination against *ad hoc* judges and particularly permanent member judges at the Courts of Industrial Relations (PHI) would render *ad hoc* judges at the Court of Industrial Relations (PHI) being a profession requiring technical competence, civic virtue and practical wisdom, the capability of settling

complicated and difficult legal problems in the field of disputes of industrial relations. So that *ad hoc* judges and particularly permanent member judges at the Courts of Industrial Relations (PHI) have the character of civic virtue, which enables them to become judges sensitive vis-à-vis public interest as reflected in their judgments, who discover conflict between value and interest, which can be harmonized in the field of industrial relations.

R. The elimination of discrimination against *ad hoc* judges would hopefully turn them into statespersons complying with elements as practical problem solvers, namely the solving of problems regarding disputes of industrial relations.

3. **Regarding Guaranty for Equitable Legal Certainty and Equal Treatment Before the Law as Executors of Judicial Powers**
   A. Whereas the Constitution of Indonesia declares Indonesia as a state based on law, the concept of a state based on law is translated as a state which is based on law, submits to law and where all people are equal before the law.
   B. Whereas one of the concepts of a state based on law is to guarantee the existence of guaranty for equitable legal certainty and equal treatment before the law, this concept is a form of a general legal umbrella which reflects the face of law *per se*. This concept renders a social and economic picture about the requirement of equality without the existence of discrimination of treatment before the law, the existence of equity and equality for everyone without exception which would produce justice for the all people (access to justice).
   C. The Constitution renders a guaranty for the existence of equitable legal certainty and equal treatment before the law according to Article 28D section (1) which states that each citizen without regard as to whether he/she is a native or not, hailing from an educated class or not, commoners or super-rich, he/she is entitled to equitable legal certainty and equal treatment before the law.
   D. The purpose and objective of this principle is to enforce the principle of justice and equality as an entity which does not distinguish whomsoever is seeking justice, so that it can waive discrimination and supremacy of the law will be upheld.
   E. The provision of Article 67 section (2) of the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations regarding the limitation of periodization of period of employment and period of retirement of *ad hoc* judges at the Courts of Industrial Relations (PHI) is one of the forms of violation against the principle of equitable legal certainty and equal treatment before the law (equality before the law).
   F. Whereas the position of *ad hoc* judges and particularly permanent member judges at the Courts of Industrial Relations (PHI) as a matter of principle are equally permanent judges, authorized officials equally select them, equally have the competence as judge, and equally working based on Presidential Decree of the Republic of Indonesia like in the case of career judges in general.
   G. The provision of Article 67 section (2) of the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations is a violation against the principle of equitable legal certainty and equal treatment before the law (equality before the law) for *ad hoc* judges and particularly permanent member judges at the Courts of Industrial Relations (PHI) being enforcers of Judicial Powers, whereby judges function as the main pillars of law enforcement, whose equality in law and legal independence should also be assured.
   H. The limitation of the tenure of and periodization for *ad hoc* judges at the Courts of Industrial Relations (PHI) renders uncertainty to *ad hoc* judges at the Courts of Industrial Relations (PHI). There is uncertainty about:
      a. Disturbance to the independence of the judge in carrying out their profession, as their period of employment is limited.
      b. Career uncertainty for *ad hoc* judges at the Courts of Industrial Relations (PHI), due to early retirement being the consequence of that limitation of office.
      c. *ad hoc* judges at the Court of Industrial Relations (PHI) retire at a productive age.

d. *ad hoc* judges will find it difficult to find job in the future, because by then they will be no longer young.
e. Difference of treatment and facilities if compared to career judges.
f. Disturbing the sustainability of examinations of cases at the Court of Industrial Relations (PHI), because it will be limited by the period of employment of *ad hoc* judges at the Courts of Industrial Relations (PHI) *per se*.

I. Violation against the principle of equitable legal certainty and equal treatment before the law (equality before the law) leads the *ad hoc* judges and particularly permanent member judges at the Courts of Industrial Relations (PHI) into uncertainty and inequality in performing their tenure and their period of retirement.

J. Based on various juridical and constitutional arguments, which the Petitioner has offered in the descriptions herein-above, the Petitioner concludes that the norm of Article 67 section (2) of the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations (Supplement to the Gazette of the Republic of Indonesia Number 4356) is contrary to the provision of Article 24 section (1), Article 27 section (1) and section (2), and Article 28D section (1) of the Constitution of the Republic of Indonesia of 1945. Therefore, there is sufficient reason for the Constitutional Court to declare that the mentioned article is contrary to the Constitution of 1945, and simultaneously declaring it to have no legal binding force.

K. Moreover, the Constitutional Court being ***"the sole interpreter of* the Constitution",** being the single institution authorized to interpret the Constitution of 1945, may render an interpretation vis-à-vis the norms contained in Article 67 section (2) of the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations (Supplement to the Gazette of the Republic of Indonesia Number 4356) related to Article 24 section (1), Article 27 section (1) and (2), and Article 28D section (1) of the Constitution of the Republic of Indonesia of 1945 as an article potentially to be disqualified, because it is unproportioned and inconsistent and thereby violating the principle of the independence of the judiciary, the principle of protection guaranty for legal certainty and equality before the law.

L. The interpretation of the Constitution of 1945 by the Constitutional Court of the norm of Article 67 section (2) of the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations (Supplement to the Gazette of the Republic of Indonesia Number 4356) related to Article 24 section (1), Article 27 section (1) and section (2), and Article 28D section (1) of the Constitution of the Republic of Indonesia of 1945 would hopefully produce an interpretation Article 67 section (2) of the Law 2/2004, to read: To the extent it is understood as *"the tenure of ad hoc judges are for a period of time of 5 (five) years and which can be extended each 5 (five) years by the Chief Justice of the Supreme Court up to reaching the age limit of retirement of judges namely 62 years old for ad hoc judges at the District Court and 67 years old for ad hoc judges* at the Supreme *Court of the Republic of Indonesia."*

M. The interpretation authority of the Tribunal of Justices of the Constitutional Court examining and to rule on cases as such (*a quo*) being "statespersons understanding the Constitution" would avoid multi-interpretation and clarify norms of law related to the position of *ad hoc* judges at the Courts of Industrial Relations (PHI) as permanent and not temporary judiciary judges, to avoid the existence of discrimination in carrying out the independence of their profession as part of the independence of the judge and judiciary bodies, as well as the existence of equality in law and equal treatment before the law related to the periodization of the tenure of *ad hoc* judges at the Courts of Industrial Relations (PHI).

PETITUM

Based on the descriptions as has been raised in the entirety of this petition, the Petitioner pleads to the Tribunal of Justices of the Constitutional Court to firstly declare that the Petitioner has legal standing to submit this petition to review a Law, and to rule on the following matters:

IN THE SUBJECT MATTER OF THE CASE

1. To accept and to grant the petition to review Article 67 section (2) of the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations (Supplement to the Gazette of the Republic of Indonesia Number 4356) against the Constitution of the Republic of Indonesia of 1945.
2. To declare that Article 67 section (2) of the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations (Supplement to the Gazette of the Republic of Indonesia Number 4356) is contrary to the Constitution of the Republic of Indonesia of 1945.
3. To declare that Article 67 section (2) of the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations (Supplement to the Gazette of the Republic of Indonesia Number 4356) is not legally binding to the extent it is understood as: the tenure of *ad hoc* judges for a period of time of 5 (five) years and which can be extended for 1 (one) more tenure in accordance with Article 67 section (2) of the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations (Supplement to the Gazette of the Republic of Indonesia Number 4356)**.**
4. To declare that Article 67 section (2) of the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations (Supplement to the Gazette of the Republic of Indonesia Number 4356) which reads entirely: "The tenure of *ad hoc* judges for period of time of 5 (five) years and which can be extended for 1 (one) more tenure" is applicable constitutionally conditional to read entirely: **"the tenure of *ad hoc* judges are for a period of time of 5 (five) years and which can be extended each 5 (five) years by the Chief Justice of the Supreme Court up to reaching the age limit of retirement of judges, namely 62 years old for *ad hoc* judges at the District Court and 67 years old for *ad hoc* judges at the Supreme Court of the Republic of Indonesia**."**
5. To declare that the ruling of the Constitutional Court applies as of the date this petition for material review is submitted.
6. To order the loading of the content of this ruling in the Official Gazette of the State of the Republic of Indonesia as it should be.

Or if the Tribunal of Justices of the Constitutional Court opines otherwise, pleading a ruling *ex aequo et bono*.

[2.2] Considering whereas to substantiate its postulates, the Petitioner has filed instruments of evidence in the form of letters/writings marked as evidence P-1 up to evidence P-22, as follows:

1. Evidence P-1: Photocopy of the Deed of Establishment of the Civil Partnership Harmoko & Partners, Number 46/PKL/2012/PN.Bks dated 11 September 2012;
2. Evidence P-2: Photocopy of Resident Identity Card on behalf of Sahala Aritonang, S.H., AM.PD.;
3. Evidence P-3: Photocopy of the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations;
4. Evidence P-4: Photocopy of the Constitution of the Republic of Indonesia of 1945;
5. Evidence P-5: Photocopy of the Law Number 8 of 2011 regarding the Amendment to the Law Number 24 of 2003 regarding the Constitutional Court;
6. Bukit P-6: Photocopy of the Presidential Decree of the Republic of Indonesia regarding the Appointment of an *ad hoc* judge on behalf of Mustofa, S.H. Number 76/P of 2015 dated 31 July 2015;
7. Evidence P-7: Photocopy of the Presidential Decree of the Republic of Indonesia regarding the Appointment of an *ad hoc* judge on behalf of Sahala Aritonang S.H., AM., Pd. Number 76/P of 2015 dated 31 July 2015;
8. Evidence P-8: Photocopy of Resident Identity Card on behalf of Mustofa, S.H. and photocopy of the Law Number 14 of 2002 regarding the Tax Court, Article 9;
9. Evidence P-9: Photocopy of the Law Number 51 of 2009 regarding the Amendment to the Law Number 5 of 1986 regarding the State Administrative Judiciary, Article 135;
10. Evidence P-10: Photocopy of the Law Number 37 of 2004 regarding Bankruptcy and Suspension of Debt Payment Obligation, Article 283 (3);

11. Evidence P-11: Photocopy of the Regulation of the Supreme Court Number 2 of 2000 regarding the Perfection of Regulation of the Supreme Court Number 3 of 1999 regarding *ad hoc* Judges, Article 1 section (1);
12. Evidence P-12A: Photocopy of the ILO Convention Number 144 of 1976 regarding Tripartite Consultation to Promote the Implementation of International Labor Standards;
13. Evidence P-12B: Photocopy of Tripartite Consultation to Promote the Execution of International Labor Standards;
14. Evidence P-13A: Photocopy of the book *Peradilan Etik dan Etika Konstitusi* (Judiciary of Ethics and Constitutional Ethics), Jimly Asshiddiqie, Sinar Grafika, Jakarta, 2011, page 109-111;
15. Evidence P-13B: Photocopy of the book *Etika Profesi Hukum* (Ethics of the Legal Profession), Abdul Kadir Muhammad, Citra Aditya Bakti, Bandung, 2006, page 57-75;
16. Evidence P-14: Photocopy of the Elucidation to the Government Regulation Number 41 of 2004 regarding the Procedure of the Appointment and Dismissal of *ad hoc* judges at the Courts of Industrial Relations (PHI), the General Elucidation, Third Paragraph;
17. Evidence P-15A: Photocopy of the testimony regarding the sum of Cassations and Reconsiderations (*Peninjauan Kembali*, PK) cases at the Supreme Court of the Republic of Indonesia;
18. Evidence P-15B: Photocopy of the testimony regarding the sum of cases at the Court of Industrial Relations (PHI) at the District Court of Surabaya of 2013-2015;
19. Evidence P-16: Photocopy of the Regulation of the Supreme Court (*Peraturan Mahkamah Agung*, Perma) Number 7 of 2006 regarding Discipline Enforcement of Judges at the Supreme Court of the Republic of Indonesia and Underneath Existing Judiciary Bodies, Article 1 figure (3);
20. Evidence P-17: Photocopy of the Joint Regulation of the Supreme Court of the Republic of Indonesia and the Judicial Commission of the Republic of Indonesia (*Komisi Yudisial*, KY) Number 02 of 2012 regarding Guidelines for Ethical Code and Guidance of Conduct;
21. Evidence P-18: Photocopy of *Varia Peradilan Majalah Hukum* (Varia of the Judiciary, Law Periodical) Volume XXX Number 348, November 2014, Prof. Bagir Manan, page 6;
22. Evidence P-19A: Photocopy of the Presidential Decree regarding the Re-Appointment of *ad hoc* judges at the Courts of Industrial Relations (PHI) at the Supreme Court of the Republic of Indonesia on behalf of Fauzan;
23. Evidence P-19B: Photocopy of the Presidential Decree Number 40/P of 2007;
24. Evidence P-20A: Photocopy of the Presidential Decree Number 5 of 2013 regarding Financial Entitlement and the Facility of *ad hoc* Judges;
25. Evidence P-20B: Photocopy of the Law Number 3 of 2009 regarding the Second Amendment to the Law Number 14 of 1985 regarding the Supreme Court, Article 1;
26. Evidence P-20C: Photocopy of the Law Number 49 of 2009 regarding the Second Amendment to the Law Number 2 of 1986 regarding General Judiciary, Article 19 Section (1) letter c;
27. Evidence P-21A: Photocopy of the Ruling of the Constitutional Court Number 43/PUU-XIII/2015 regarding the Review of the Law Number 49 of 2009 regarding the Second Amendment to the Law Number 2 of 1986 regarding General Judiciary, the Law Number 50 of 2009 regarding the Second Amendment to the Law Number 7 of 1989 regarding the Judiciary of Religion, the Law Number 51 of 2009 regarding the Second Amendment to the Law Number 5 of 1986 regarding the State Administrative Judiciary;
28. Evidence P-21B: Photocopy of the Ruling of the Constitutional Court Number 6/PUU-XIV/2016 regarding the Review of the Law Number 14 of 2002 regarding the Tax Court;

29. Evidence P-22: Photocopy of the Certificate of Graduation from the Education of Candidate *Ad hoc* Judges on behalf of Horadin Saragih.

Besides, the Petitioner has proposed an expert who has been heard of his testimony at the trial of the Court on the date 31 August 2016, which testifies as follows:

1. Maruarar Siahaan

Introduction

The postulate of the petition of the Petitioner is that Judges at the Courts of Industrial Relations (PHI) according to Article 24 section (1) of the Constitution of 1945 and Article 19 of the Law Number 48 of 2009 Regarding Judicial Powers are state officials performing Judicial Powers. Therefore Article 67 section (2) of the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations implying the determined periodization of the tenure, contravenes the Constitution of 1945.

1. The Independence of the Judge

Independence of the judge is a principle of the Constitution which is the foundation and source of conception to develop good governance. Conceptually the principle of independence is based on public trust and is developed in the frame of safeguarding and upholding the rule of law in an accountable government. Literature and the Congress of the Supreme Courts in the world have jointly discussed this case repeatedly. The *Bangalore Principles of Judicial Conduct* of 2002 have also been adopted by the Supreme Court and the Constitutional Court in the Code of Ethics drafted and applied to judges in Indonesia. Article 24 section (1) of the Constitution of 1945 being a norm of the Constitution and source of legislation policy in the position of the judge, confirms that Judicial Powers are independent powers to perform the judiciary towards upholding law and justice.

That independence of judges is a precondition for the manifestation of aspiration of a state based on law and is a guaranty for upholding law and justice. Independence is also named autonomy and the freedom of the judge, either severally as well as institution wise from various influence, hailing from outside the person of the judge in the form of intervention having the nature of influencing directly or indirectly, could be in the form of gentle persuasion, pressure, coercion, threat or act of reprisal, because of certain political or economic interest, from whomsoever, with rewards or promised rewards in the form of office advantage, economic advantage or other forms.

Judges shall also encourage, uphold and enhance guaranty for independence. The independence or autonomy of judges are actually not the right of the judge, but the right of justice seekers to gain judges capable of being independent. Independence *per se* is a precondition for the ultimate value of independence of the judge, namely impartiality (neutrality), to be manifested. Judges are granted independence, because they are appointed as trusted third parties to settle disputes to manifest an impartial attitude. On the other hand, impartiality being the outcome of independence still needs to be supported by integrity, competence – diligence – and wisdom.

The independence of judges still needs to be developed and safeguarded by arranging a series of safeguards which render a broad space for the judge to freely move to render justice in the process of law enforcement. Those guaranties can be placed in the tenure, the process of election and of appointment. One of the characters in fulfilling the office of the judge, which can be a guaranty for his/her independence is his/her character which is not political. Offices having political nature, are indeed offices which holding is conducted by means of election as elected officials through political process. Although in Indonesia there are judges recruited and selected by the Judicial Commission and to be presented to the Parliament for approval, indeed the involvement of the Parliament as such does not turn the office of judges into political offices. That is only political process in the frame of checks and balances.

The office of judges – which is not of political nature in Indonesia nowadays - appears to be conducted through two lanes, namely the lane having the nature of career judges and non-career judges lanes. The career lane is intended for university level graduates who since the beginning have been recruited to become judges – with a long process since selection, the special education, interned as candidate judge, and afterwards appointed to become judges by virtue of Presidential Decree. Such judge career would depart from a judge at the first level in the four environments of the judiciary, and afterwards be promoted to become a judge at the level of appeal, and at the helm to become a supreme court justice

until reaching the age of 70 years. Such a long selection process and tenure, is indeed one of the guaranties which is intended to develop the existence of independence of the judge.
Nowadays we also know *ad hoc* judges at the Courts of Industrial Relations, which special process of selection is also conducted by the Supreme Court, by first entering the special education, and afterwards to be appointed as judge at a Court of Industrial Relations. The tenure of *ad hoc* judges at the Courts of Industrial Relations is determined in Article 67 section (2) of the Law Number 2 of 2004 of 5 (five) years and which can be extended for 1 (one) more tenure. When there is a tenure which equals the public offices having political nature and elected in political process, then indeed this case is one of the characteristics to be avoided in the office of independent judges. Particularly when a periodization becomes an adopted part, then generally that threat to independence hails from the authority which determines the second tenure for the respective judge and the intention of the respective judge to have that second tenure. This can certainly be understood from the perspective of the judge in relation to the right to work and the right to gain guaranty for career certainty. Nevertheless, indeed such threat should be avoided conceptually, because it has the great potential to violate the principle of the Constitution in Article 24 section (1).

2. The Nature of *ad hoc* Judges at the Courts of Industrial Relations (PHI)

There is one obvious contradictive character of *ad hoc* judges at the Courts of Industrial Relations (PHI), namely when the elucidation to the Government Regulation Number 41 of 2004 regarding the Procedure of the Appointment and Dismissal of *ad hoc* judges at the Courts of Industrial Relations and *ad hoc* judges at the Supreme Court determines that *"ad hoc judges as regulated by the Law Number 2 of 2004 have a particularity if compared to ad hoc judges at other courts. ad hoc judges at the Industrial Courts and ad hoc judges* at the Supreme *Court are permanent, because the settlement of each case of disputes of industrial relations is conducted by a tribunal of judges composed of a career* judge *as the chair of the tribunal and 2 (two) ad hoc judges respectively as members of the tribunal of judges."*
This statement is a description different from the understanding of *ad hoc* judges in general, which earns its meaning from the word *ad hoc*, hailing from Latin and means "*for this*", which is generally interpreted as a solution designed for a special duty or problem, and cannot be made to have general nature and is not intended for adjustment to be used for other intentions or objectives. (Wikipedia, *The Free Encyclopedia*). Generally, in various Laws regarding the Judiciary, *ad hoc* judges are said to be of temporary nature, and is based on special expertise. Nevertheless, in fact, *ad hoc* judges become permanent in a certain period, who can be extended for the next period. Actually *ad hoc* judges are those having a certain expertise which is needed in the examination of certain cases at the court. After such specific case is closed, then the duty of an *ad hoc* judge is also accomplished. By regulating the tenure and the procedure of the appointment, which is no longer specifically related to a certain case involving a special problem and requiring a relevant expertise from people other than the available judges, the understanding " *ad hoc* " as a matter of fact indicates rather a source or method to recruit judges hailing from outside of the environment of the judiciary occupied by judges pursuing a career all the way from the beginning. In other words, the understanding of *ad hoc* judges have shifted to become judges from the lane of non-career judges, although it should not be necessarily that way.
Because of a change in the meaning of " *ad hoc* " in the existing laws and regulations, then from the perspective of the duty and authority of *ad hoc* judges at the Courts of Industrial Relations (PHI), there is no difference with judges at the District Court compared to judges at the Courts of Industrial Relations (PHI), save that judges at the District Court would always become chair of a tribunal at the Court of Industrial Relations (PHI), and *ad hoc* judges would become members of the tribunal. Chief Judges and member judges actually share the same duty and authority as "Court Judges beneath the Supreme Court being state officials performing Judicial Powers existing with the judiciary bodies beneath the Supreme Court (Article 31 section (1) of the Law Number 48 of 2009 regarding Judicial Powers).

3. Inconsistency vis-à-vis the Constitution of 1945

The tenure which is different to that of the career judges and the subsequent periodization of 5 years which can be extended by a subsequent tenure of 5 years is different from the tenure and the process of

sustainability of the office of career judges. The Constitutional principle stating that same matters or same situations will be treated equal, as is regulated by Article 28D section (1) which reads:
"Every person shall be entitled to recognition, guaranty, protection, and equitable legal certainty as well as equal treatment before the law".
The different treatment and regulation of *ad hoc* judges, judges at the Courts of Industrial Relations (PHI) and the career judges in general are contrary to the aspect of equality before the law which is a principle of the Constitution which shall be upheld. *ad hoc* judges at the Courts of Industrial Relations (PHI) are judges. Based on the argument that in the system of law adhered to, *ad hoc* judges have become judges through a different lane of recruitment which has a non-career nature, at least in the Law of the Court of Industrial Relations (PHI), *ad hoc* judges at the Courts of Industrial Relations share the equal duty and authority, therefore they should also have the equal position and rights like the other judges in the same or different judiciary in the environment beneath the Supreme Court.

Conclusion

1. *Ad hoc* judges at the Courts of Industrial Relations (PHI) are judges having the duty and authority as performers of Judicial Powers beneath the Supreme Court, who hails from the non-career lane, who deserve equal treatment;
2. The term of periodic office of the judges at the Courts of Industrial Relations (PHI) which can be extended for a subsequent tenure of 5 years, appears to follow the character and period of political offices in Indonesia, which bears the potential to obstruct the independence of judges;
3. The office of *ad hoc* judges at the Courts of Industrial Relations (PHI) is not an office having a political character, but the *ad hoc* lane is only one method of recruitment of judges from the non-career environment, so that their rights and authorities are equal, and should be treated equally like the career judges;
4. The Ruling Number 6/PUU-XIV/2016 dated 4 August 2016 regarding the material review of Article 13 section (1) letter c of the Law Number 14 of 2002 regarding the Tax Court is a strong reference for the material review of this case, particularly regarding the paradigm of equal treatment and non-discrimination against judges at the Courts of Industrial Relations (PHI).

3. The Witness Fauzan

- Whereas in 2005 of the witness was proposed by the Tourism Labor Union (*Serikat Pekerja Pariwisata*) to follow the selection as a candidate *ad hoc* judge at the Supreme Court and he was declared to have passed the selection. After having passed the selection, the witness followed the education of candidate *ad hoc* judges at the Courts of Industrial Relations (PHI) and followed the fit and proper test by a Panel of the Supreme Court, and was declared to have passed the test.
- In June 2007, the witness was appointed based on a Presidential Decree (*Keputusan Presiden*, Keppres) as an *ad hoc* judge at the Supreme Court. Subsequently in September 2007 the witness was sworn in by the Chief Justice of the Supreme Court as an *ad hoc* judge at the Supreme Court. As a consequence of being appointed as a judge, the witness had to resign from his previous job, because based on regulations he was not allowed to hold concurrent positions. The witness resigned from the board of a Labor Union according to the Laws. The witness worked fulltime only as an *ad hoc* judge, as he was not allowed to hold other positions. The consequence equals that of the career judges who are bound by ethical code and employment tending to conflict of interest.
- The principal duty and the function of the witness as an *ad hoc* judge at the Supreme Court is to examine, to adjudicate, and to rule on cases. Ad hoc judges decide all cases of industrial relations. The witness performed the principal duty and the function of examining, adjudicating, and deciding after having obtained the stipulation as a member to the tribunal by the Chief Justice of the Supreme Court. Furthermore, the witness read dossiers, rendered opinions and submitted as well as decided on cases. The witness also did work of proceedings (*minutasi*), correction of rulings, *et cetera*.
- The witness also had to follow activities at the Supreme Court at the order of the leaders. As a judge, the witness had to be present at work every day and to do check-in presence list.
- The witness obtained monthly allowance. The witness also obtained housing and transportation, is similar like that of the career judges.

4. The Witness Alfil Syahril

- The witness became a judge through selection as regulated by the Law Number 2 of 2004, namely by abiding to the precondition like not being at the board of a Labor Union or to resign from his previous job.
- The witness became an *ad hoc* judge at the Court of Industrial Relations hailing from the element of organization of entrepreneurs. The witness was previously the Secretary of the Central Board (the Central Leadership Council, *Dewan Pimpinan Pusat*, DPP) of the Association of Indonesian Entrepreneurs (*Asosiasi Pengusaha Indonesia*, Apindo) of West Kalimantan, Pontianak, based on the Presidential Decree Number 112/P/2010 dated 4 October 2010. The witness was stationed at the Court of Industrial Relations at the District Court of Surabaya, based on the Ruling of the Supreme Court Number 195/KMA/SK/XII/2010 dated 1 December 2010.
- The witness hails from Pontianak, West Kalimantan, and his costs of movement from Pontianak to Surabaya was shouldered by the state. Before he was installed as an *ad hoc* judge, the witness had to follow the training for candidate *ad hoc* judges at the Courts of Industrial Relations in 2010, performed by the Supreme Court and the Ministry of Manpower and Transmigration of the Republic of Indonesia. He was declared to have passed the training based on a Certificate dated 4 August 2010. Subsequently the witness had to follow the Education and Training for the Certification of Judges at the Courts of Industrial Relations in the environment of the general judiciary all over Indonesia from 22 February up to 6 March 2015, in accordance with the Certificate Number 44BLD/MARI/2015 performed by Center for Training and Development (*Balai Latihan dan Pengembangan*, Balitbang) and Education and Training on Law and Judiciary (*Pendidikan dan Pelatihan Hukum dan Peradilan*) of the Supreme Court.
- He was sworn into the office of and was installed as an *ad hoc* judge at the Court of Industrial Relations at the District Court of Surabaya on the date 29 December 2010.
- After having performed the duty and job as an *ad hoc* judge at the Court of Industrial Relations at the District Court of Surabaya for the first period, on the date 4 October 2015 of the Presidential Decree RI Number 76/P/2015 dated 31 July 2015 was issued with regard to the honorable dismissal and the re-appointment as an *ad hoc* judge at the Court of Industrial Relations at the District Court and to rule on the Supreme Court Number K109/KMA/VIII/2015 dated 24 August 2015 regarding the Re-Appointment as an *ad hoc* judge at the Court of Industrial Relations for the second tenure and place of duty at the District Court of Surabaya. By this time the witness is carrying out his duty of as an *ad hoc* judge at the Court of Industrial Relations at the District Court of Surabaya for the second term.
- Whereas the witness has carried out the daily duty and job equally like the other judges at the District Court of Surabaya, namely practice the check-in presence list on arrival and going home. The Chairperson of the District Court of Surabaya stipulated the Tribunal of Judges. The dates of trials are adjusted with the schedule of the Chairperson of the Tribunal of Judges. Ruling is made by the member judges, in this case the *ad hoc* judges, after conducting a consultation of the Tribunal of Judges and the ruling would be pronounced by the Chairperson of the Tribunal of Judge in a trial.
- Whereas based on the Presidential Decree Number 5 of 2013 regarding Financial Entitlement and the Facility of *ad hoc* Judges, the witness received a monthly allowance in the amount of IDR. 17,500,000.00 and following deduction by Income Tax (*Pajak Penghasilan*, PPH) Article 21, the witness received an allowance in the amount of IDR. 15,966,667.00 and other facilities as regulated by Article 2 of the Presidential Decree Number 5 of 2013, namely official residence and transportation facility. While holding office in Surabaya, the *ad hoc* judge leased a house on his own account. In 2016 the *ad hoc* judge just enjoyed this thirteenth month allowance and Holliday Allowance (*Tunjangan Hari Raya*, THR) based on PP Number 19 of 2016 and PP Number 20 of 2016.
- After holding office as *ad hoc* judge at the Court of Industrial Relations, the witness was no longer on the board of Apindo of West Kalimantan and had resigned from the place where the witness was employed.

- Whereas the appointment of the witness as an *ad hoc* judge at the Court of Industrial Relations is regulated by Article 63, while the precondition as an *ad hoc* judge at the General Industrial Court as regulated by Article 64 of the Law Number 2 of 2004. Subsequently he was honorably dismissed as *ad hoc* judge at the General Industrial Court as regulated by Article 67, whereas dismissal without honor is regulated by Article 68 of the Law Number 2 of 2004.
- The procedure of dismissal without honor and the dismissal of temporary *ad hoc* judges are mentioned in Article 67, Article 68, Article 69, and Article 72 in conjunction with the Government Regulation Number 41 of 2004 where it says: "*ad hoc* judges as regulated by the Law Number 2 of 2004 have a particularity if compared to *ad hoc* judges at other courts. *ad hoc* judges at the General Industrial Court and *ad hoc* judges at the Supreme Court are permanent in nature, because the settlement of each case of disputes of industrial relations is always conducted by the Tribunal of Judges with the composition of a career judge as the Chairperson of the Tribunal and 2 *ad hoc* judges respectively as members of the tribunal of judges".

[2.3] Considering whereas against the petition of the Petitioner, the President submitted his testimony at the trial dated 23 August 2016 and he has submitted his testimony in writing as conveyed at the Office of the Clerk of the Court dated 23 August 2016, which in essence is as follows:

I. THE SUBJECT OF THE PETITION OF THE PETITIONER

Whereas the Petitioner pleads to review as to whether:

The provision of Article 67 section (2) of the PPHI Law, which reads: *The tenure of ad hoc judges is for a period of 5 (five) years and which can be extended for 1 (one) more tenure.*

contravenes with:

Article 24 section (1) of the Constitution of 1945 which reads:

"The Judicial Powers *shall be an independent power in order to perform the judiciary in order to enforce law and justice."*

Article 27 section (1) and section (2) of the Constitution of 1945 which reads:

(1) All citizens shall be equal before the law and in government and shall uphold the law and government without exception.

(2) Every citizen shall be entitled for work and a living that is decent for humanity.

Article 28D section (1) which reads:

"Every person shall be entitled to recognition, guaranty, protection, and equitable legal certainty as well as equal treatment before the law."

II. THE LEGAL STANDING OF THE PETITIONER

In relation with the legal standing of the Petitioner, the Government opines as follows:

1. Article 51 section (1) of the Law Number 24 of 2003 as has been amended by the Law Number 8 of 2011 regarding the Constitutional Court mentions that the Petitioner is a party who assumes that his constitutional rights and or authorities have been harmed by the enactment of a law namely:
   a. an Indonesian individual citizen;
   b. unities of the *adat* law societies to the extent that they are still alive and are in accordance with the development of the public and the principle of the Unitary State of the Republic of Indonesia as is regulated by Laws;
   c. public or private legal entities; or
   d. state institutions.

   The provision mentioned herein-above is confirmed in its elucidation, that understood by "*constitutional rights*" are rights as regulated by the Constitution of 1945;

   As such, for a person or a party to be accepted as Petitioner who has legal standing in his petition to review a Law against the Constitution of 1945, he shall first clarify and substantiate that:
   a. His qualification as a Petitioner in the petition as such (*a quo*) as mentioned in Article 51 section (1) of the Law Number 24 of 2003 regarding the Constitutional Court as has been amended by virtue of the Law Number 8 of 2011;
   b. His constitutional rights and/or authorities in the mentioned qualification are assumed to have been harmed by the enactment of the Law to be reviewed;

c. The loss of the constitutional rights and/or authorities of the Petitioner is a consequence of the enactment of the Law petitioned for review.

2. Whereas furthermore through the Ruling of the Constitutional Court Number 006/PUU-III/2005 and the Ruling Number 11/PUU-V/2007 and subsequent rulings, the Court has retained its stance that the loss of rights is subject to five conditions namely:
   a. there are rights and or authorities of the Petitioner granted by the Constitution of 1945;
   b. the Petitioner assumes that those rights and or authorities have been harmed by the enactment of the laws and regulations petitioned for review;
   c. that loss shall have a specific nature and be actual or at least can be ascertained according to normal reasoning that it bears the potential to happen;
   d. there is a causal relation (Dutch: *causal verband*) between a loss as mentioned and the enactment of the laws and regulations petitioned for review;
   e. there is the possibility that by the granting of the petition, the loss of rights like postulated will not happen and/or will not happen again;
3. Whereas based on the entire description, according to Government it is necessary to question the interest of the Petitioner as to whether he is a proper party to assume that his constitutional rights and authorities have been harmed by the enactment of the provision of Article 67 section (2) of the PPHI Law. Also, as to whether the constitutional loss of the Petitioner as mentioned has specific nature and is actual or at least it can be ascertained according to normal reasoning that it bears the potential to happen, and as to whether there is a causal relation (Dutch: *causal verband*) between the loss and the enactment of the Law petitioned for review;
4. Whereas according to the Government there is no loss suffered by the Petitioner, because the Petitioner could not postulate the constitutional loss he suffered due to the enactment of Article 67 section (2) of the PPHI Law, which is deemed to be contrary to Article 27 section (1), Article 28I section (2) of the Constitution of 1945, based thereon that the Petitioner has not been obstructed in carrying out his job as an *ad hoc* judge at the Court of Industrial Relations as a consequence of the enactment of the provision as such (*a quo*). Besides, the rights of the Petitioner as an *ad hoc* judge (like: salary, allowance, as well as the other facilities granted by the state) which to date as have been received by the Petitioner has neither been **reduced, eliminated, limited, hampered nor harmed by the enactment of the provision as such (*a quo*).** So that according to the Government the argument of the existence of constitutional loss suffered by the Petitioner have obviously not been substantiated.

Based on the postulate herein-above, the Government opines that the Petitioner does not fulfill the requirement of legal standing and it is appropriate if the Honorable Tribunal of Justices of the Constitutional Court prudently declare **the petition of the Petitioner not acceptable** *(Dutch: **niet ontvankelijk verklaard**)*.

III. TESTIMONY OF THE GOVERNMENT REGARDING THE PETITION MATERIAL PETITIONED FOR REVIEW

Whereas Article 24 section (1) of the Constitution of 1945 has determined that Judicial Powers are independent powers to perform the judiciary to uphold law and justice. Those Judicial Powers are conducted by the Supreme Court and the judiciary bodies beneath it in the environment of general judiciary, the environment of the Judiciary of Religion, the environment of the Military Judiciary, the environment of the Judiciary of State Administration and by the Constitutional Court.

Other than the environment of the general judiciary, the environment of the Judiciary of Religion, the environment of the Military Judiciary, the environment of the Judiciary of State Administration, a special court can also be established in one of the environments of the judiciary existing beneath the Supreme Court which formation is to be regulated by the Laws.

Currently there are several special judiciaries, among others the Court of Criminal Act of Corruption, the Court of Human Rights, the Court of Fishery, the Court of Commerce, the Court of Industrial Relations, and the Tax Court.

At those special courts *ad hoc* judges can be appointed to examine, to adjudicate, and to rule on cases requiring the expertise and experience in certain fields, like those related to banking crime, tax crime, criminal act of corruption, disputes of industrial relations, and cyber-crime, as is determined in the Law Number 48 of 2009 regarding Judicial Powers.

The definition of judge in Article 1 figure 5 of the Law Number 48 of 2009 comprises judges at the Supreme Court and judges with the judiciary bodies existing beneath it in the environment of the general judiciary, the environment of the Judiciary of Religion, the environment of the Military Judiciary, the environment of the Judiciary of State Administration, and judges at the special courts existing in the environment of those judiciaries.

Meanwhile *ad hoc* judge in Article 1 figure 9 of the Law Number 48 of 2009 regarding Judicial Powers comprises *ad hoc* judges being **j**udges of temporary nature having the expertise and experience in certain fields to examine, to adjudicate, and to rule on cases whose appointment is regulated by the Laws.

The formation of *ad hoc* judge was initially intended to strengthen the role and the function of Judicial Powers in upholding law and justice in line with the complexity of the cases. *ad hoc* judges are non-career judges who have the expertise and capability to adjudicate special cases, so that *ad hoc* judges can give positive effect when *ad hoc* judges join career judges in the handling of a case.

The existence of *ad hoc* judges at the institution of the special courts is needed, because of their expertise as well as experience in certain fields to examine, to adjudicate, and to rule on certain cases, like for instance those related to banking crime, tax crime, criminal act of corruption, disputes of industrial relations, and cyber-crime.

The respective Laws regulate the particularity of ad hoc judges. Therefore, the conditions to become an *ad hoc* judge are different from the conditions and particularity of the other judges. This difference also applies between career judges and *ad hoc* judges. The respective Laws regulate the differences, like those related to the preconditions as well as the procedures of appointment and dismissal.

Therefore, according to the Government, the assumption of the Petitioner that the position of *ad hoc* judges at the Courts of Industrial Relations and those at the Supreme Court (MA) and particularly career judges are as a matter of principle equal to those of the career judges, becomes unfounded and irrelevant. The is already a Ruling of the Constitutional Court regarding the difference between career judges and *ad hoc* judges (vide Ruling of the Constitutional Court Number 32/PUU-XII/2014 page 112 figure [3.20]), which in its legal consideration the Court declared: *"whereas according to the Court there is indeed a difference between the ad hoc judges and career judges, but that difference does not immediately raise a difference in treatment as mentioned in Article 28I section (2) of* the Constitution *of 1945. The difference is justified to the extent that the nature, character and need of that office are different. It will indeed raise discrimination if a different matter is treated equally or reversely same matters are treated differently. According to the Court, although the ad hoc judges and the career judges share the same status as judge, the character and need of the office are different. This is the policy realm of the lawmakers"*.

The conditions and procedures of appointment of the pattern of recruitment of *ad hoc* judges at the Courts of Industrial Relations (PHI) and *ad hoc* judges at the Supreme Court (MA) are different from the pattern of recruitment of career judges. One of the differences in the recruitment of *ad hoc* judges at the Courts of Industrial Relations (PHI) and *ad hoc* judges at the Supreme Court (MA) is that they are proposed by the workers unions/labor unions and the organization of entrepreneurs to the Minister of Manpower. Furthermore, those who pass the selection will be presented to the Chief Justice of the Supreme Court and proposed to the President for appointment [vide Article 63 section (1) and section (2) of the PPHI Law].

According to the Government, to be appointed as *ad hoc* judges, basically candidate *ad hoc* judges at the Courts of Industrial Relations (PHI) and candidate *ad hoc* judges at the Supreme Court (MA), they should already know the duty and the function of *ad hoc* judges at the Courts of Industrial Relations (PHI) and *ad hoc* judges at the Supreme Court (MA), as well as the terms and conditions to become *ad hoc* judges at the Courts of Industrial Relations (PHI) and *ad hoc* judges at the Supreme Court (MA), including to **consciously recognize the tenure and limit of retirement age** of *ad hoc* judges at the Courts of Industrial Relations (PHI) and *ad hoc* judges at the Supreme Court (MA).

The tenure of the temporary nature of *ad hoc* judges as mentioned in Article 1 figure 9 of the Law Number 48 of 2009 regarding Judicial Powers have been regulated basically in several laws

and regulations regarding special judiciaries. So that if the petition of the Petitioner which declines the existence of limitation of the tenure of *ad hoc* judges at the Courts of Industrial Relations (PHI) and *ad hoc* judges at the Supreme Court (MA) in the provision of Article 67 section (2) of the PPHI Law *in casu* is granted, that would affect the position of *ad hoc* judges in the other special judiciaries.

Whereas the provision of the tenure as regulated by Article 67 section (2) of the PPHI Law is already according to the meaning of *ad hoc* judges of temporary nature as regulated by Article 1 figure 9 of the Law Number 48 of 2009 regarding Judicial Powers. So that if the provision regarding the extension of the tenure of *ad hoc* judges at the Courts of Industrial Relations (PHI) and *ad hoc* judges at the Supreme Court (MA) as regulated by Article 67 section (2) of the PPHI Law is revoked, then its meaning will change and there will be no longer *ad hoc* judges.

To understand the provision of Article 67 section (2) of the PPHI Law which states that: *"The tenure of ad hoc judges for a period of 5 (five) years and which can be extended for 1 (one) more tenure"***,** shall be related with the provision of Article 67 section (1) of the PPHI Law. The Provision of Article 67 section (1) of the PPHI Law is a mandate of the Constitution which regulates the honorable dismissal from the office of *ad hoc* judges at the Courts of Industrial Relations (PHI) and *ad hoc* judges at the Supreme Court (MA). The provision of Article 67 section (1) of the PPHI Law mentions:

ad hoc judges at the Courts of Industrial Relations and *ad hoc* judges for Industrial Relations at the Supreme Court are honorably dismissed from their offices due to:

a. Demise;
b. Own accord;
c. Continuous physical or mental disease for 12 (twelve) months;
d. Has reached the age of 62 (sixty-two) years for ad hoc judges at the Courts of Industrial Relations and has reached the age of 67 (sixty-seven) years for ad hoc judges at the Supreme Court;
e. Incapable to carry out duties;
f. At the request of the proposing organization of entrepreneurs or the organization of workers/organization of laborers; or
g. has completed his/her tenure.

Whereas related to the above-mentioned Article 67 section (1) letter f of the PPHI Law, as a matter of principle the presence of *ad hoc* judges at the Courts of Industrial Relations (PHI) and *ad hoc* judges at the Supreme Court (MA) is inseparable as an element of the workers unions/labor unions and the organization of entrepreneurs, because *ad hoc* judges at the Courts of Industrial Relations (PHI) and *ad hoc* judges at the Supreme Court (MA) are proposed and simultaneously assigned by such organizations, which may be revoked at any time. As such if that tenure is not limited, there will be a legal confusion vis-à-vis the presence of *ad hoc* judges at the Courts of Industrial Relations (PHI) and *ad hoc* judges at the Supreme Court (MA).

Whereas the provision of Article 67 section (2) of the PPHI Law has rendered sufficient opportunity to *ad hoc* judges at the Courts of Industrial Relations (PHI) and *ad hoc* judges at the Supreme Court (MA) having the potential to become *ad hoc* judges for 1 (one) more tenure.

Whereas according to the Government, with regard to the tenure of *ad hoc* judges at the Courts of Industrial Relations (PHI) and *ad hoc* judges at the Supreme Court (MA) as regulated by Article 67 section (2) of the PPHI Law is a policy option (legal policy) of the lawmakers (the Parliament jointly with the President), and that policy option cannot be made subject to material review, save if its drafting raises injustice and discriminative treatment or in other words the provision as such (*a quo*) has been drafted ignoring the existence of factors distinguishing race, tribe, religion, gender, social status, and others as mentioned in the Law Number 39 of 1999 regarding Human Rights and the International Covenant On Civil Political Rights (ICCPR).

Therefore, according to the Government, the provision petitioned for review is already in line with and is not contrary to Article 24 section (1), Article 27 section (1) and (2) and Article 28D section (1) of the Constitution of 1945.

The Government opines, if the petition of the Petitioner is deemed to be correct – which is not true (*quod non*) - and be granted by the Constitutional Court, then according to the Government,

that could indeed raise injustice and legal uncertainty about the term of office/the term of duty of *ad hoc* judges at the Courts of Industrial Relations (PHI) and *ad hoc* judges at the Supreme Court (MA).

IV. PETITUM

Based on the above-mentioned elucidation and argument, the Government pleads to the Honorable Chief Justice/the Tribunal of Constitutional Justices, to render the following ruling:

1) To declare that the Petitioner has no legal standing;
2) To dismiss the entire petition of the Petitioner to review or at least to declare the petition of the Petitioner to review not acceptable (Dutch: *niet ontvankelijk verklaard*);
3) To accept the testimony of the President entirely;
4) To declare that the provision of Article 67 section (2) of the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations is not contrary to the provision of Article 24 section (1), Article 27 section (1) and section (2) and Article 28D section (1) of the Constitution of the Republic of Indonesia of 1945.

[2.4] Considering that the Parliament has submitted its testimony in writing against the petition of the Petitioner, as received by the Office of the Clerk on the date 19 October 2016, in the following essence:

A. THE PROVISION OF THE LAW NUMBER 2 OF 2004 PETITIONED FOR REVIEW AGAINST THE CONSTITUTION OF 1945.

The Petitioner in his petition pleads to review Article 67 section (2) of the Law Number 2 of 2004 against the provision of Article 24 section (1), Article 27 section (1) and section (2), and Article 28D section (1) of the Constitution of 1945, that the content of the provision of Article 67 section (2) of the Law Number 2 of 2004 in essence is that *the tenure of ad hoc judges for a period of time of 5 (five) years and which can be extended for 1 (one) more tenure*.

B. THE CONSTITUTIONAL RIGHTS AND/OR AUTHORITIES ASSUMED BY THE PETITIONER TO HAVE BEEN HARMED BY THE ENACTMENT OF THE LAW NUMBER 2 OF 2004.

The Petitioner has assumed in his petition as such (*a quo*) that his constitutional rights are harmed by the enactment of Article 67 section (2) of the Law Number 2 of 2004 which is as follows:

1. According to the Petitioner the provision of Article 67 section (2) of the Law Number 2 of 2004 is harmful for the Petitioner, because this norm regulates the periodization of the judges in the environment of the Courts of Industrial Relations. The Petitioner assumes that the of periodization of the tenure of *ad hoc* judges at the Courts of Industrial Relations raises a problem, particularly related to the sustainability of the settlements, examinations, adjudications, and rulings on cases regarding disputes of industrial relations which should render equitable protection for laborers, workers, and the government; (vide petition page 5)
2. The Petitioner states that periodization of office of *ad hoc* judges at the Courts of Industrial Relations raises career uncertainty as judge at the Court of Industrial Relations, whereby its pattern of recruitment is to be followed through stringent and selective process involving the President by Presidential Decree for its confirmation and also the role of the Supreme Court and the Judicial Commission as supervisory bodies; (vide petition page 5)

The articles as such (*a quo*) are assumed to be contrary to Article 24 section (1), Article 27 section (1) and section (2), and Article 28D section (1) of the Constitution of 1945 which mandates as follows:

1. Article 24 section (1):
   (1) "The Judicial Powers shall be independent power in order to perform the judiciary in order to enforce law and justice."
2. Article 27 section (1) and section (2):

(1) "All citizens shall be equal before the law and in government and shall uphold the law and government without exception."

(2) "Every citizen shall be entitled for work and a living that is decent for humanity."

3. Article 28D section (1):

(1) "Every person shall be entitled to recognition, guaranty, protection, and equitable legal certainty as well as equal treatment before the law."

The Petitioner has pleaded in his Petitum to the Tribunal of Justices as follows:

1. To accept and to grant the petition to review Article 67 section (2) of the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations (Supplement to the Gazette of the Republic of Indonesia Number 4356) against the Constitution of the Republic of Indonesia of 1945.
2. To declare that Article 67 section (2) of the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations (Supplement to the Gazette of the Republic of Indonesia Number 4356) is contrary to the Constitution of the Republic of Indonesia of 1945.
3. To declare that Article 67 section (2) of the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations (Supplement to the Gazette of the Republic of Indonesia Number 4356) is not legally binding.
4. To declare that Article 67 section (2) of the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations (Supplement to the Gazette of the Republic of Indonesia Number 4356) which entirely reads: "The tenure of the *ad hoc* judges for period of time of 5 (five) years and which can be extended for 1 (one) more tenure" (applicable constitutionally conditional) to read entirely: "the tenure of *ad hoc* judges is for a period of time of 5 (five) years and which can be extended each 5 (five) [years] by the Chief Justice of the Supreme Court up to reaching the limit of retirement age of judges namely 62 years for *ad hoc* judges at the District Court and 67 years for *ad hoc* judges at the Supreme Court of the Republic of Indonesia .
5. To declare that the ruling of the Constitutional Court applies as of this petition for material review is submitted.
6. To order the loading of this ruling in the Official Gazette of the State of the Republic of Indonesia as it should be.

C. TESTIMONY OF THE PARLIAMENT

Before opining against the postulate of the Petitioner as described in the Petition as such (*a quo*), the Parliament should first describe about legal standing as follows:

1. The Legal Standing of the Petitioner

The qualification to be fulfilled by the Petitioner as a Party has been regulated by the provision of Article 51 section (1) of the Law Number 24 of 2003 regarding the Constitutional Court (furthermore abbreviated as the Law of the Constitutional Court), which states that "*The Petitioner is a party who assumes that his/her* constitutional rights *and authorities have been harmed by the enactment of a law, namely:*

a. *an Indonesian individual citizen;*
b. *unities of the adat law societies to the extent that they are still alive and are in accordance with the development of the public and the principle of the Unitary State of the Republic of Indonesia as is regulated by Laws;*
c. *public or private legal entities; or*
d. *state institutions.*

The constitutional rights and/or authorities mentioned in the provision of Article 51 section (1), is confirmed in its elucidation, that understood by "*constitutional* rights" are "*rights as regulated by* the Constitution *of the Republic of Indonesia of 1945*." This provision of the Elucidation to Article 51 section (1) confirms, that only rights explicitly regulated by the Constitution of 1945 are covered as "*constitutional rights*".

Therefore, based on the Law of the Constitutional Court, for a person or a party to be accepted as a Petitioner having legal standing in his/her petition to review a Law against the Constitution of 1945, the Petitioner should first explain and substantiate:

a. His/her qualification as a Petitioner in the petition as such (*a quo*) as mentioned in Article 51 section (1) of the Law of the Constitutional Court;
b. The constitutional rights and/or authorities as mentioned in "the Elucidation to Article 51 section (1)" are assumed to have been harmed by the enactment of a Law.

About the parameter of constitutional loss, the Constitutional Court has rendered an understanding and definition regarding the constitutional loss arising because of the enactment of a Law shall fulfill 5 (five) conditions (vide the Ruling Number 006/PUU-III/2005 and Number 011/PUU-V/2007) namely as follows:

a. there are constitutional rights and/or authorities of the Petitioner granted by the Constitution of 1945;
b. the Petitioner assumes those constitutional rights and/or authorities of the Petitioner to have been harmed by a Law to be reviewed;
c. the mentioned loss of the constitutional rights and/or authorities of the Petitioner has a specific nature and is actual, or at least can be ascertained according to normal reasoning that it bears the potential to happen;
d. the existence of causal relation *(*Dutch: *causal verband)* between a loss and the enactment of a Law petitioned for review;
e. there is the possibility that by the granting of the petition, the postulated constitutional loss and/or authority will not happen or will not happen again.

If those five conditions are not fulfilled by the Petitioner in the case of review of a Law as such (*a quo*), then the Petitioner has no qualification of legal standing as a Party to be a Petitioner. Responding to the petition of the Petitioner as such (*a quo*), the Parliament opines that the Petitioner shall first be able to substantiate in concrete as to whether the Petitioner is truly a party who assumes that his constitutional rights and authorities have been harmed due to the enactment of the provision petitioned for review, particularly in constructing the existence of loss of his constitutional rights and authorities as a consequence of the enactment of the provision petitioned for review.

The Parliament renders the following elucidation against the postulates raised by the Petitioner as such (*a quo*):

1) Whereas the Petitioner has not at all suffered constitutional loss, because the loss mentioned by the Petitioner in his petition has an assumptive nature absent the certainty that it will happen, and the Petitioner also have not been able yet to substantiate the existence of a causal relation *(*Dutch: *causal verband)* between a loss postulated by the Petitioner by the enactment of the provision of Article 67 section (2) of the Law as such (*a quo*) petitioned for review.
2) Whereas the postulate declaring that: The Petitioner in the petition as such (*a quo*) is basically not a constitutional problem, because there are no constitutional rights and/or authorities of the Petitioner which have been harmed by the enactment of Article 67 section (2) of the Law as such (*a quo*).

Based on those matters presented, the Parliament opines that the Petitioner has entirely no legal standing, because he does not fulfill the provision of Article 51 section (1) and the Elucidation to the Law of the Constitutional Court, as well as he does not fulfill the preconditions of constitutional loss as decided in the previous ruling of the Constitutional Court. The Petitioner in his petition as such (*a quo*) has not described in concrete regarding his constitutional rights and/or authorities being assumed to have been harmed due to the enactment of the provision petitioned for review, particularly in constructing the existence of the loss of his constitutionality rights and/or authorities which have been harmed due to the enactment of that provision petitioned for review.

Based on those descriptions herein-above, the Parliament fully submits to the Honorable Chief Justice/the Tribunal of Constitutional Justices to consider and to assess as to whether the Petitioner has legal standing as regulated by Article 51 section (1) of the Law of the Constitutional Court and to rule on the Constitutional Court Number 006/PUU-III/2005 and the Ruling Number 011/PUU-V/2007 regarding the parameter of constitutional loss.

2. Material Review on the Law Number 2 of 2004

1) The Constitution of 1945 confirms that Indonesia is a state based on law. In line with that provision, one of the important principles of a state based on law is the existence of guaranty for the performance of independent Judicial Powers, free from the influence of the other powers to perform judiciary to upholding law and justice. Article 24 section (1) of the Constitution of 1945 confirms that Judicial Powers are independent power to perform judiciary to upholding law and justice. The Amendment to the Constitution of the Republic of Indonesia of 1945 has brought about a change in Indonesia's constitutional life, particularly in the execution of Judicial Powers. That Amendment among others confirms that the Judicial Powers is performed by the Supreme Court and the judiciary bodies existing beneath it in the environment of the general judiciary, the environment of the Judiciary of Religion, the environment of the Military Judiciary, the environment of the Judiciary of State Administration, and by the Constitutional Court.
2) Whereas other than the comprehensive regulation, this Law is also to fulfill the Ruling of the Constitutional Court Number 005/PUU/2006, whereby one of its verdicts has cancelled Article 34 of the Law Number 4 of 2004 regarding Judicial Powers. That Ruling of the Constitutional Court has also cancelled the provision related to the supervision of judges in the Law Number 22 of 2004 regarding the Judicial Commission. Related to that matter, as an effort to strengthen the performance of Judicial Powers and to manifest the system of the integrated justice system, then the Law Number 4 of 2004 regarding Judicial Powers being a base for the performance of Judicial Powers needs to be replaced. The important matters in this Law are among others:
    a. To reformulate the systematic of the Law Number 4 of 2004 regarding Judicial Powers with regard to the comprehensive regulation in this Law, like for instance the existence of a separate chapter regarding the principle for performance of Judicial Powers.
    b. General regulation regarding the supervision of judges and constitutional justices according to the laws and regulations and Code of Ethics and Guidance for the Attitude of Judges.
    c. General regulation regarding the appointment and dismissal of judges and constitutional judges.
    d. Regulation regarding a special court which has the authority to examine, to adjudicate and to rule on certain cases which can only be established in one of the environments of the judiciary bodies existing beneath the Supreme Court.
    e. Regulation regarding the ad hoc judges of temporary nature having the expertise as well as experience in certain fields to examine, to adjudicate, and to rule on a case.
    f. General regulation regarding arbitration and out of court alternative dispute settlement.
    g. General regulation regarding legal aid for justice seekers who are financially not capable and the regulation regarding the desk of legal aid at each court.
    h. General regulation regarding guaranty for the security and welfare of the judges and constitutional judges.
3) Whereas important matters as regulated by this Law regarding Judicial Powers particularly with regard to the ***Regulation regarding*** **the Special Courts** ***and Regulation regarding ad hoc Judges of Temporary Nature*** is to guarantee each citizen shall be equal before the law and in government and shall uphold the law and government without exception, *(2)* Each citizen shall be entitled for work and a living that is decent for humanity, as assured by Article 27 section (1) and (2) of the Constitution of 1945. Based thereon the Parliament opines that the postulate of the Petitioner stating that the periodization of *ad hoc* judges can raise career uncertainty for judges and harm constitutional rights pursuant to the provision of Article 27 section (1) and (2) of the Constitution of 1945 is unfounded. Relevant. According to the opinion of the Parliament, the Petitioner has interpreted the provision of that article of the Constitution 1945 all too far, which in this case is very subjective in the interest of the Petitioner.
4) The position of the ***ad hoc*** **judges of temporary nature** shall be related with the position of a special court as regulated by the Law Number 4 of 2004 regarding Judicial Powers. Based on Article 1 figure 9 of Powers ("Law regarding Judicial Powers"), *ad hoc* judges are,

"judges of temporary nature having the expertise and experience in certain fields to examine, to adjudicate, and to rule on cases whose appointment is regulated by the laws." *ad hoc* judges *per se* are appointed at the special courts, being courts in one of the environments of the judiciary existing beneath the Supreme Court, either in the environment of the general judiciary, the environment of the Judiciary of Religion, the environment of the Military Judiciary, the environment of the Judiciary of State Administration. Like for instance *ad hoc* judges at the Court of Human Rights, the Court of Criminal Act of Corruption, the Court of Fishery, or the Court of Commerce. The difference between the *ad hoc* judges with the other judges in general is particularly with regard to his/her temporary term of duty/limited to a certain period, and that they shall have the expertise and experience in certain fields. While the term *ad hoc* judges are found in many laws and regulations. Among others **Article 1 figure 6 of the Law Number 49 of 2009 regarding the Second Amendment to the Law Number 2 of 1986 regarding General Judiciary** mentioned that: *" ad hoc judges are judges of temporary nature having the expertise and experience in certain fields to examine, to adjudicate, and to rule on cases whose appointment is regulated by the laws."* The same is also regulated by **Article 1 figure 9 of the Law Number 50 of 2009 regarding the Second Amendment to the Law Number 7 of 1989 regarding the Judiciary of Religion** ("Law regarding the Judiciary of Religion"), which afterwards is further elucidated in **Article 3A section (3) of the Law regarding the Judiciary of Religion.** Indeed *ad hoc* judges are only appointed for a certain period, which nature is temporary. In the Law of the Court of Human Rights and the Law of the Court of Criminal Acts of Corruption this temporary nature is limited for a period of five years.

5) According to the Law as such (*a quo*), the Court of Industrial Relations is a special court established in the environment of the District Court which is authorized to examine, to adjudicate and render ruling in disputes of industrial relations. *ad hoc* judges are *ad hoc* judges at the Courts of Industrial Relations and *ad hoc* judges at the Supreme Court whose appointment is at the proposal of the workers unions/labor unions and the organization of entrepreneurs. ***The temporary placing of ad hoc judges at a special court like the Court of Industrial Relations is equitable and legally based if the tenure of ad hoc judges is for a period of time of 5 (five) years and which can be extended for 1 (one) more tenure, so that it is irrelevant if the Petitioner relates it with career uncertainty, because it is obvious and firm that ad hoc judges are no career judges but judges whose nature is temporary.*** Thereby the provision of Article 67 section (2) of the Law Number 2 of 2004 is in line with Article 28D section (1) of the Constitution of 1945 which mandates, "*Every person shall be entitled to recognition, guaranty, protection, and equitable legal certainty as well as equal treatment before the law."* The Parliament opines that there are no constitutional rights of the Petitioner which have been harmed due to the enactment of the provision of Article 67 section (2) of the Law as such (*a quo*) vis-à-vis the Article 28D section (1) of the Constitution of 1945.

6) The Court of Industrial Relations is one of the agents of the Judicial Powers. In Article 27 of Powers (hereinafter referred to as Law regarding Judicial Powers), mentioned that that:
   (1) A special court can only be established in one of the environments of the judiciary existing beneath the Supreme Court as mentioned in Article 25.
   (2) The provision regarding the establishment of a special court as mentioned in section (1) is regulated by the laws".

   The Formation of the Court of Industrial Relations is firmly regulated by Article 55 of the Law Number 2 of 2004, which state that: "*The Court of Industrial Relations is a special court existing in the environment of general judiciary*".

7) Whereas to examine, to adjudicate, and to rule on cases related to disputes of industrial relations, judges of temporary nature having the expertise and experience in the field of industrial relations are needed, as affirmed in Article 1 figure 9 Law regarding Judicial Powers, mentioning that: *" ad hoc judges are judges of temporary nature having the expertise and experience in certain fields to examine, to adjudicate, and to rule on cases whose appointment is regulated by the laws".*

8) Whereas against the assumption of the Petitioner that the article as such (*a quo*) has discriminated the *ad hoc* judges in the Courts of Industrial Relations, the Parliament opines by referring to the provision of Article 1 figure 3 of the Law Number 39 of 1999 regarding Human Rights the understanding is: "*Discrimination is each limitation, harassment, or isolation which is direct or indirect based on distinction of humans based on religion, tribe, race, ethnic, group, class, social status, economic status, gender, language, political conviction, leading to reduction, deviation or elimination recognition, execution or utilization the human rights and basic freedoms in life individually as well as collectively in the fields of politics, economy, law, social, culture, and the other aspects of life*." Based on the understanding on discrimination as regulated by the Law regarding Human Rights it is obvious that the regulation regarding the tenure of *ad hoc* judges in the article as such (*a quo*) of the Law Number 2 of 2004 does not fulfill elements of discrimination as regulated by the Law regarding Human Rights. Based on that Law regarding Human Rights, the provision of Article 67 section (2) of the Law as such (*a quo*), has no discriminative nature and is therefore not contrary to Article 28D section (1) of the Constitution of 1945.
9) The regulation regarding the tenure of *ad hoc* judges has been regulated firmly in various laws and regulations, like:
   a) Article 28 section (3) of the Law Number 26 of 2000 regarding the Court of Human Rights (hereinafter referred to as the Law 26 of 2000) which mentions that:" *ad hoc judges are appointed for 5 (five) years and which can be extended for 1 (one) more tenure."*
   b) Article 10 section (5) of the Law Number 46 of 2009 regarding the Court of Criminal Act of Corruption mentioned that: "*… ad hoc judges as mentioned **in section** (4) are appointed for the tenure of 5 (five) years and which can be extended for 1 (one) more tenure*."
   c) The general elucidation to the Law Number 26 of 2000 mentioned that'' … *The presence of ad hoc judges is needed, because their expertise is in line with the complexity of cases of criminal acts of corruption either involving the modus operandi, substantiating, as well as the large extent of criminal acts of corruption, among others in the field of finance and banking, taxation, capital market, procurement of goods and services*."

   Based on that provision of the Law, the regulation regarding the tenure of *ad hoc* judges and its temporary nature is limited for the tenure of five years and which can be extended for one more tenure.
10) Whereas according to the Ruling of the Constitutional Court Number 56/PUU-X/2012, 15 January 2013, which renders an understanding of *ad hoc* judges as follows:" … *The understanding of ad hoc judges should refer to the temporary nature and has no permanent nature, so that ad hoc judges are only needed to adjudicate certain cases. Therefore, ad hoc judges should only shoulder the status of judge while handling cases which he/she examines and adjudicate on."*
11) The postulate of the Petitioner assuming that the provision of Article 67 section (2) of the Law as such (*a quo*), raises problems related to the sustainability of the settlements, examinations, and ruling on cases of dispute of industrial relations and career uncertainty as a judge, is not reasoned and not founded on law. It should be understood with regard to that postulate of the Petitioner, that judges are the spearhead of enforcement of law and justice in a state based on law, then judges should be professional and independent in carrying out their duty and function as judge, either career judges as well as *ad hoc* judges. The autonomy of judges in examining and adjudicating on cases would hopefully produce equitable ruling and legal certainty for justice seekers. Therefore, judges should dig out, follow and understand values of law and sense of justice alive in the public, so that needed are qualified judges, who have personality and good integrity, beyond reproach, honest, equitable, professional and have the expertise and experience in the field of industry. If ad hoc judges fulfill all those provisions of the laws and regulations, there will be no worry with regard to the sustainability of the settlements, examinations, and ruling on cases of

dispute of industrial relations and certainly the handed ruling would render sense of justice to the disputing parties.

12) Based on the provision of Article 32 Law regarding Judicial Powers, *ad hoc* judges can be appointed at special courts to examine, to adjudicate, and to rule on cases requiring the expertise and experience in certain fields in a certain period. The elucidation to that article mentioned that the objective of appointing *ad hoc* judges is to support the settlement of cases requiring special expertise, in this case in the field of industry relations. The *ad hoc* judges are given special allowance in carrying out their duty and responsibility as regulated by the Regulation of the President Number 5 of 2013 Regarding Financial Entitlement and Facilities for *ad hoc* judges, namely financial entitlement and facilities for *ad hoc* judges as granted to career judges. As such the postulate of the Petitioner assuming that the existence of different treatment and facilities with those of the career judges is not reasoned, because the rights as *ad hoc* judges are fulfilled.
13) The Petitioner needs to understand, that *ad hoc* judges do not start from the profession of judges, because the precondition to become an *ad hoc* judge at the Court of Industrial Relations does not require the education of a law graduate, but shall have the special expertise and certain experience according to his/her scientific discipline. Candidate *ad hoc* judges are presented by the Chief Justice of the Supreme Court from names approved by the Minister performing the affairs in the field of Manpower at the proposal of workers unions/labor unions and the organization of entrepreneurs. Other than from the perspective of his/her appointment, *ad hoc* judges are appointed by the President at the proposal of the Chief Justice of the Supreme Court. This is different from the appointment of career judges which is conducted by the Supreme Court. Article 70 of the Law Number 2 of 2004 mentioned that: "*the Appointment ad hoc judges at the Courts of Industrial Relations is conducted by paying regard to the need and source of the available resources.*" That means that the appointment of *ad hoc* judges shall be in accordance with the need. The limitation to the tenure of office of *ad hoc* judges in a period of 5 (five) years and which can be extended for 1 (one) more tenure, is to render the widest opportunity to the public who have the competence in the expertise of certain fields to become *ad hoc* judges at the Court of Industrial Relations.
14) Thereby the Parliament opines that Article 67 section (2) of the Law Number 2 of 2004 is not contrary to Article 24 section (1), Article 27 section (1) and section (2), and Article 28D section (1) of the Constitution of 1945.

Based on postulates mentioned herein-above, the Parliament pleads, may the Honorable Chief Justice of the Tribunal of Justices of the Constitutional Court render a verdict of ruling as follows:

1) To declare that the Petitioner has no legal standing, so that the petition as such (*a quo*) shall be declared not acceptable (Dutch: *niet ontvankelijk verklaard*);
2) To declare the petition as such (*a quo*) dismissed entirely or at least that the petition as such (*a quo*) is not acceptable;
3) To declare the testimony of the Parliament accepted entirely;
4) To declare that Article 67 section (2) of the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations is not contrary to the Constitution of 1945;
5) To declare that Article 67 section (2) of the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations has legal binding force.

If the Honorable Chief Justice of the Tribunal of Justices of the Constitutional Court opines otherwise, we plead a ruling *ex aequo et bono*.

[2.5] Considering whereas the Related Parties, the Federation of Indonesian Tourism and Sectoral Labor Unions (FSP Paras Indonesia) have submitted their testimonies in writing against the petition of the Petitioner as received at the trial of the Court on the date 19 September 2016 with the following essence:

A. Regarding the Constitutional Loss of the Petitioner

1. The Related Parties agree, that the Petitioner as an individual holding office as an *ad hoc* judge at the Court of Industrial Relations due to the enactment of the provision of Article 67 section (2) of the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations (PPHI) has suffered constitutional loss, as mentioned in the provision of Article 51 section (1) of the Law Number 24 of 2003 regarding the Constitutional Court. Due to the limitation of the office of *ad hoc* judges at the Courts of Industrial Relations (PHI) for a period of time of 5 years and which can be extended for one more tenure, the mentioned limitation of the tenure would disturb his independence as a judge, bearing in mind that the Petitioner after being appointed as an *ad hoc* judge at the Court of Industrial Relations (PHI) must resign from all his job and after dismissal as an *ad hoc* judge at the Court of Industrial Relations (PHI) would find it difficult to find a new employment, while the Petitioner is still in his productive age and has to provide a living for his family.

B. Regarding *ad hoc* Judges at the Courts of Industrial Relations (PHI) having Permanent Nature at the Courts of Industrial Relations as a Form of Independent Judicial Powers.

2. Whereas it is true that the Related Party In accordance with the provision of Article 63 section (2) of the PPHI Law have proposed a member of the Related Parties to follow the selection of *ad hoc* judges at the Court of Industrial Relations (PHI) and following graduation afterwards he became an *ad hoc* judge at the Court of Industrial Relations (PHI). The Related Party In the frame of safeguarding the honor and independence of the proposed *ad hoc* judges at the Courts of Industrial Relations (PHI), submits it fully to the Supreme Court being the holder of the Judicial Powers granted the authority by the Constitution for safeguarding its independence.
3. Whereas it is true that *ad hoc* judges at the Courts of Industrial Relations (PHI) are permanent in nature by the following reasons.
   a. Whereas in accordance with the provision of Article 88 and Article 113 of the PPHI Law, a tribunal of judges consists of career judges and two *ad hoc* judges, which furthermore reads:

      Article 88

      (1) The Chief Judge of the District Court within a time not later than seven business days following the receipt of a lawsuit shall have stipulated the right of a tribunal of judges consisting of one judge as the chair of the tribunal and two ad hoc judges as members of the tribunal, examining and to rule on a dispute.

      (2) ad hoc judges as mentioned in section (1) consists of one ad hoc judge whose appointment is proposed by workers unions/labor unions and one ad hoc judge whose appointment is proposed by the organization of entrepreneurs, as mentioned in Article 63 section (2).

      (3) *To assist the duty of the tribunal of judges, as mentioned in section (1) one substitute clerk is appointed.*

      Article 113

      The Tribunal of judge of cassation consists of 1 (one) Supreme Court Justice and two ad hoc judges who are assigned to examine and to adjudicate on cases of dispute of industrial relations at the Supreme Court who are appointed by the Chief Justice of the Supreme Court.

   b. Whereas in accordance with the General Elucidation to the Government Regulation Number 41 of 2004 regarding the Procedure of the Appointment and Dismissal of *ad hoc* judges at the Courts of Industrial Relations (PHI) at the District Courts and *ad hoc* judges at the Courts of Industrial Relations (PHI) at the Supreme Court confirming that *ad hoc* judges at the Courts of Industrial Relations (PHI) are permanent in nature, reads as follows, *"ad hoc judges as regulated by the Law Number 2 of 2004 have a particularity if compared to ad hoc judges at other courts, ad hoc judges in industrial relations and ad hoc judges at the Supreme Court are permanent in nature, because the settlement of each case of dispute of industrial relations is always conducted by a tribunal of judges, with the composition of a career judge as the chair of a tribunal and two ad hoc judges respectively as members of the tribunal of judges."*

c. The existence of the Court of Industrial Relations is in accordance with the ILO Convention Number 144 of 1976 regarding Tripartite Consultation to Promote the Implementation of International Labor Standards which has been ratified based on the Presidential Decree Number 29 of 1990, whereby this Convention mandates that the settlement of labor policy affairs, including industrial disputes, shall involve tripartite tribunals, namely the government, the entrepreneurs, and the workers. The presence of *ad hoc* judges at the Courts of Industrial Relations (PHI) has a permanent nature.

d. The permanent nature of *ad hoc* judges at the Courts of Industrial Relations (PHI) is the more obvious if compared to the presence of *ad hoc* judges at the Tax Court, the Court of State Administration, and the Commercial Court, which are obviously appointed only to examine very specific cases. Based on the stipulation of the chair of the court, that relevant provision of the laws reads as follows, the Law Number 14 of 2002 regarding the Tax Court, Article 9:

(1) To be appointed as a judge ..., et cetera."

(2) To examine and to rule on certain cases of tax disputes requiring special expertise, the chair may appoint ad hoc judges as members."

(3) To be appointed as an ad hoc judge, one shall comply with the requirements as mentioned in section (1), save to letter b and letter f."

As such in the tax court distinguishes between permanent non-career taxation judges and *ad hoc* tax judges on call. The Law Number 5 of 1986 regarding the Court of State Administration, Article 135 reads:

(1) In case the court examines and decides on cases of certain state administration requiring special expertise, then the chair of the court may appoint one ad hoc judge as a member of the tribunal.

(2) To be appointed as an ad hoc judge one shall comply with the requirements as mentioned in Article 14 section (1), save to letter e and letter f.

(3) The prohibition as mentioned in Article 18 section (1) letter c does not apply to ad hoc judges.

(4) The procedure of appointment of ad hoc judges at the courts as mentioned in section (1) shall be regulated by government regulation."

As such the Court of State Administration distinguishes between judges in state administration (*Tata Usaha Negara*, TUN) (permanent career) from *ad hoc* judges in state administration (on call).

The Law Number 37 of 2004 regarding Bankruptcy and Suspension of Debt Payment Obligation, Article 302 section (3) reads:

(4) *By still considering the conditions as mentioned in section (2) letter b, letter c, and letter d, by virtue of a Presidential Decree at the proposal of the Chief Justice of the Supreme Court, an expert can be appointed as ad hoc judge, either at the court of the first level, cassation, as well as at the level of re-consideration (peninjauan kembali*).

As such, the Commercial Court distinguishes between career judges in commerce or permanent career judges and *ad hoc* judges in commerce on call.

The Regulation of the Supreme Court Number 2 of 2000 regarding the Perfection of Regulation of the Supreme Court Number 3 of 1999 regarding *ad hoc* judges,

Article 1 section (1) reads:

(1) ad hoc judges are experts in their field appointed by the President at the proposal of the Chief Justice of the Supreme Court."

Article 3 section (1) reads:

(1) ad hoc judges have the task of member judges at a tribunal to examine and to rule on cases of commerce assigned at the respective tribunal.

e. *De facto* wise, the relevant party who frequently proceeds at the Court of Industrial Relations witnesses *per se* that *ad hoc* judges at the Courts of Industrial Relations (PHI) are present at work every day and has permanent nature.

4. Whereas it is true that there is a logical fallacy in concluding about the attitude of *ad hoc* judges at the Courts of Industrial Relations (PHI), namely to draw invalid conclusion based on the premise that *ad hoc* judges at the Courts of Industrial Relations (PHI) have no permanent nature

(*ad hoc* judges on call). In fact, based on laws and regulations, as well as based on reality in the field (*de facto*) *ad hoc* judges at the Courts of Industrial Relations (PHI) are permanent in nature as has been raised herein-above. Therefore, their tenure should not be limited based on periodization.

5. Whereas due to a logical fallacy, based on the provision of Article 67 section (2) of the PPHI Law the tenure of *ad hoc* judges at the Courts of Industrial Relations (PHI) is limited by periodization like the political offices. Therefore, based on theories regarding the independence of the judge which is universal as has been raised by the Petitioner in his postulates, in the frame of guaranteeing the independence of the judge, a judge should only be dismissed because of objective reasons, namely by reason of attitude and health of the judge.

C. Regarding Discriminative Reason in the Occupation and the Right of Occupation and Decent Living of Judges as Executors of Judicial Powers

6. Whereas the related party admits all the postulates of the Petitioner related to this discriminative reason.
7. Whereas it is true that in accordance with the provision of Article 88 and Article 113 of the PPHI Law *ad hoc* judges at the Courts of Industrial Relations (PHI) along with the career judges as well as the Supreme Court Justices have as a matter of function equal powers in ruling on each examined case at the Court of Industrial Relations (PHI), so that in accordance with the provision of Article 27 section (1) and section (2) of the Constitution of 1945 they should obtain equal treatment particularly in the matter of tenure.
8. Whereas the *ad hoc* judges at the Courts of Industrial Relations (PHI) have the same function like all the judges in the four environments of the judiciary, yet one which is almost equal, either in the process to become a judge as well as during the time of being a judge, they share one characteristic that is almost equal with the taxation judges, distinguished only by adding the title of "*ad hoc*" and the tenure only.
9. Whereas a petition for material review have been presented to the Constitutional Court under Number 6/PUU-XV/2016 regarding the tenure of taxation judges, and the Constitutional Court has granted the petition which determined that the tenure of taxation judges is not based on periodization, but up to the age of retirement. By the consideration (3.14) that *judges at the tax courts are equal to or parallel with judges at the High Court of state administration, the High Court in the environment of general judiciary, as well as at the High Court of Religion, the provision regarding the honorable dismissal of a judge at a Tax Court shall also be adjusted with the provision regarding the honorable dismissal from the office of a High Court judge in the environment of the Judiciary of State Administration as described in the paragraph herein-above, then in order not to raise difference related to the periodization of the tenure of taxation judges, the tenure of the judges at the Tax Courts should also be as regulated by Article 8 section (3) of the Law regarding the Tax Court which does not recognize tenure or periodization.*
10. Because *ad hoc* judges at the Courts of Industrial Relations (PHI) are substantially equal to taxation judges in accordance with the provision of Article 27 section (1) and section (2) of the Constitution of 1945, no discrimination is permitted particularly in the tenure, namely the tenure of *ad hoc* judges at the Courts of Industrial Relations (PHI) shall be equal with the tenure of taxation judges not basing it only on periodization in accordance with Article 67 section (2) of the PPHI Law, or periodization up to the retirement age as petitioned by the Petitioner. As no tenure or periodization should be recognized, the provision of Article 67 section (2) of the PPHI Law should be declared to have no legal binding force.

D. Regarding Guaranty for Equitable Legal Certainty and Equal Treatment Before the Law as Executor of Judicial Powers

11. The Related Parties admit the postulates of the Petitioner regarding the reason for the guaranty for legal certainty.
12. Whereas essentially in accordance with the description made by the Related Parties herein-above, if compared to all the judges in the four environments of the judiciary, the *ad hoc* judges at the Courts of Industrial Relations (PHI) equals most the Taxation Judges, either in terms of

position as well as their function, then in accordance with the provision of Article 28D section (1) of the Constitution of 1945 as well as the principle of a state based on law which is universal, the *ad hoc* judges at the Courts of Industrial Relations (PHI) shall obtain equal legal certainty, particularly regarding the tenure of the judge.

Based on all what has been described herein-above, the Related Parties plead to the Honorable Tribunal of Justices of the Constitutional Court deign to render the following judgment.

1. To accept and to grant the petition to review Article 67 section (2) of the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations (Supplement to the Gazette of the Republic of Indonesia Number 4356) against the Constitution of the Republic of Indonesia of 1945;
2. To declare that Article 67 section (2) of the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations (Supplement to the Gazette of the Republic of Indonesia Number 4356) is contrary to the Constitution of the Republic of Indonesia of 1945.
3. To declare that Article 67 section (2) of the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations (Supplement to the Gazette of the Republic of Indonesia Number 4356) has no legal binding force.
4. To order the loading of this ruling in the State Gazette of the Republic of Indonesia as it should be.

Moreover, if the Honorable Tribunal of Justices of the Constitutional Court opines otherwise, we plead the fairest possible judgment.

[2.6] Considering whereas the Related Parties, the Central Board of the Federation of the Labor Union of Cigarettes Tobacco Food Beverages of the All Indonesia Labor Union (PP FSP RTMM-SPSI) have submitted their testimony in writing against the petition of the Petitioner, as received at the trial of the Court on the date 19 September 2016 in the following essence:

***Ad hoc* judges at the Courts of Industrial Relations (PHI) having Permanent Nature and Independence of the Judge**

- Whereas it is true that the Related Party In accordance with Article 63 section (2) of the PPHI Law has proposed a member of the Related Parties to follow the selection of *ad hoc* judges and following graduation afterwards to become an *ad hoc* judge of the Related Party In the frame of safeguarding the honor of the independence of *ad hoc* judges as proposed, submits entirely to the Supreme Court as holder of Judicial Powers granted the authority to safeguard his independence by the Constitution.
- The provision of Article 64 of the Law Number 2 of 2004 regarding PPHI, regulates the precondition for appointment to become an *ad hoc* judge having experience in the field of industrial relations of minimum 5 years and has been proposed by the workers union or labor unions and the organization of entrepreneurs.
- To fulfill the condition as is elucidated in point 3, an internal selection which is relatively stringent and selective is needed, in order to pass at the stage of the Ministry of Manpower and afterwards of the Supreme Court of the Republic of Indonesia after gaining a personality which suits the culture of the institution of the judiciary.
- The observation against those who have passed and became an *ad hoc* judge less than 10 years with an *ad hoc* judge proposed to have fulfilled the qualification.
- Whereas the presence of *ad hoc* judges at the Supreme Court of the Republic of Indonesia deserve to be retained with a range period according to our assessment as Workers Union Organization. *Ad hoc* judges at the Supreme Court of the Republic of Indonesia have the expertise to handle special civil cases of which we have no doubt, basic capability complying with certainty and sense of justice as well as their integrity, we have no doubt.
- The *ad hoc* judges at the Court of Industrial Relations (PHI) have functions which are the same with those judges in the 4 (four) environments of the judiciary. Nevertheless, the closest in resemblance with the *ad hoc* judges at the Court of Industrial Relations are the Taxation Judges, namely in the process to become a judge as well as being a judge, the only difference lies in the title "*ad hoc*" and the tenure only.
- A petition for material review for the tenure of taxation judges have been filed with the Constitutional Court under Number 6/PUU-XIV/2016 and the Constitutional Court has granted the

petition, which declared that the tenure of taxation judges is not founded on periodization but up to the age of retirement.

- Whereas because the substance of *ad hoc* judges at the Courts of Industrial Relations (PHI) is similar to that of the taxation judges, then in accordance with the provision of Article 27 section (1) and section (2) of the Constitution of 1945, there shall be no discrimination, particularly in terms of office, namely the tenure of *ad hoc* judges at the Courts of Industrial Relations (PHI) shall be equal with the tenure of Taxation Judges, not based merely on periodization in accordance with Article 67 section (2) of the PPHI Law for a periodization of up to retirement age as petitioned by the Petitioner. Nevertheless, actually no tenure or periodization should be recognized, so that Article 67 section (2) of the Law the Court of Industrial Relations (PHI) should be declared to have no legal binding force.

Guaranty for Equitable Legal Certainty and Equal Treatment Before the Law

- The Related Parties admit the postulates of the Petitioner regarding the reason of guaranty for legal certainty.
- Whereas in essence in accordance with that which the Related Parties have described herein-above, there shall be equal legal certainty particularly regarding the tenure of the judges for the *ad hoc* judges at the Courts of Industrial Relations (PHI) and for all the judges in the four environments of the judiciary, and particularly the closest equality to that of the Taxation Judges, either with regard to the position as well as their function, such as is in accordance with the provision of Article 28D section (1) of the Constitution of 1945 as well as the universal principle of a state based on law.

Based on all what have been described herein-above, the Related Parties plead to the Honorable Tribunal of Justices the Constitutional Court deigns to render the following judgment.

1. To accept and grant the Petitioner the review of Article 67 section (2) of the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations (Supplement to the Gazette of the Republic of Indonesia Number 4356) against the Constitution of the Republic of Indonesia of 1945.
2. To declare that Article 67 section (2) of the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations (Supplement to the Gazette of the Republic of Indonesia Number 4356) is contrary to the Constitution of the Republic of Indonesia of 1945.
3. To declare that Article 67 section (2) of the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations (Supplement to the Gazette of the Republic of Indonesia Number 4356) has no legal binding force.
4. To order the loading of this ruling in the Official Gazette of the State of the Republic of Indonesia as it should be.

Nevertheless, if the Honorable Tribunal of Justices of the Constitutional Court opines otherwise, we plead the fairest possible judgment.

[2.7] Considering whereas the Related Parties, the Defense Team of the Workers/Laborers for the Movement of National Welfare (*Buruh Untuk Gerakan Kesejahteraan Nasional*) have submitted their testimony in writing against the petition of the Petitioner, which was received at the trial of the Court on the date 19 September 2016 in the following essence:

A. THE AUTHORITY OF THE CONSTITUTIONAL COURT

1. Whereas Article 24C section (1) of the Constitution of 1945states:
   *"*The Constitutional Court has the authority to adjudicate at the first and final instance, the ruling of which is final, to review laws against the Constitution, to rule on authority disputes of state institutions whose authorities are granted by the Constitution, to rule on the dissolution of a political party, and to rule on disputes regarding the result of a general election*";*
2. Whereas based on the provision herein-above, the Constitutional Court is authorized to review laws against the Constitution of 1945, which is also based on Article 10 section (1) of the Law Number 24 of 2003 regarding the Constitutional Court as has been amended by the Law Number 8 of 2011 regarding the Amendment to the Law Number 24 of 2003 regarding the Constitutional Court (furthermore referred to as the Law of the Constitutional Court) stating that:

"the Constitution*al Court is authorized to adjudicate at the first and final level which ruling is final to: (a)* ***to review laws against*** **the Constitution** ***of the Republic of Indonesia of 1945***";

3. Whereas the Constitutional Court was established as an institution to guard the Constitution. If there is a Law containing or was drawn-up contrary to the Constitution (*unconstitutional*), then the Constitutional Court may annul it by cancelling the existence of that Law entirely or article wise;
4. Whereas being the guardian of the Constitution, the Constitutional Court is also authorized to render interpretation against provisions of articles of a Law to adjust them with the values of the Constitution. The interpretation of the Constitutional Court against the constitutionality of the articles of that Law is the sole interpretation (the sole interpreter of the Constitution) having the force of law. Therefore, an interpretation of the Constitutional Court can also be petitioned against articles having ambiguous meaning, is unclear, and/or is prone to multi-interpretation;
5. Whereas in order to accede to the case Number 49/PUU-XIV/2016 the Related Parties herewith submit the Petition in writing to the Constitutional Court, based on the provision of Article 14 section (5) of the Regulation of the Constitutional Court Number 06/PMK/2005 regarding Guidance to Proceed in Cases of Review of the Laws, which states:
   "The Related Parties as mentioned in section (1) shall file a petition to the Court through the Clerk, which furthermore if approved stipulated by a Stipulation of the Chief Justice of the Court, the copy of which is conveyed to the concerned party."

B. THE LEGAL STANDING OF THE RELATED PARTY IN THE CASE NUMBER 49/PUU-XIV/2016

1. Whereas in this petition the Related Parties has a direct interest in the subject matter of the petition in the case Number 49/PUU-XIV/2016;
2. Whereas the provision regarding the Related Parties having a direct interest has been regulated by Article 14 section (2) of the Regulation of the Constitutional Court Number: 06/PMK/2005 regarding the Guidance to Proceed in Case of Review of the Laws, stating that:
   "The Related Parties having a direct interest is a party whose rights and/or authorities are influenced by the subject matter of the petition."
3. Whereas the Related Parties are entirely Union of Workers/Union of Laborers having direct interest in the enforcement of the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations (furthermore referred to as the PPHI Law) which constitutionality is being reviewed by the Petitioner in the case Number **49/PUU-XIV/2016** in the Constitutional Court, as regulated by the PPHI Law namely;

   Article 63 section (2)
   "Candidate ad hoc judges as mentioned ***in section*** *(1) presented by the Chief Justice of the Supreme Court from names approved by the Minister at the proposal of the workers unions/labor unions and the organization of entrepreneurs."*
   Article 67 section (1) letter f
   "Ad hoc judges at the Courts of Industrial Relations and ad hoc judges for Industrial Relations at the Supreme Court may be dismissed honorably from their offices due to: at the request of the proposing organization of entrepreneurs or the organization of workers/organization of laborers";
4. Whereas the Related Parties are workers unions/labor unions having a national scope having interest in the sense that the element of representation of the element of the workers unions/labor unions remain maintained in the mechanism of the effort to fulfill justice which is conducted at the Court of Industrial Relations;
5. Whereas the Related Parties may be categorized as individuals and/or groups of people sharing the same interest whose rights would be affected if the Constitutional Court would not grant or would dismiss the petition of the cases of review under Number 49/PUU-XIV/2016;
6. Whereas the Law Number 21 of 2000 regarding the Union of Workers/Union of Laborers has confirmed in Article 27 letter a of the Law Number 21 of 2000 regarding the Union of Workers/Union of Laborers (furthermore referred to as the Law regarding SP/SB) stating that:
   "The workers unions/the union of laborers, the federation and con-federation of workers unions/labor unions who already have the registration number of evidence are obliged;

a. *To protect and to defend a member from violations against his/her rights and* ***to fight for his/her interests;***
b. *To fight for the improvement of the welfare of the members and their families;*
c. *To be accountable for the activities of the organization to its members according to the articles of association and the bylaws.*

7. Whereas the Related Party Is a "group of people sharing the same interest as may be seen from the following matters:
   a. Grammar wise, the *Kamus Umum Bahasa Indonesia* (General Dictionary of the Indonesian Language) by W.J.S Poerwadarminta, raised an understanding of the word "*Serikat*" (Union) as follows: *"1. a union; association; compound; bond; ... for example: Union of common workers; Union of laborers."* Based on that Dictionary is obvious that the Related Parties are an association or group of workers or group of people who share the same interests;
   b. Article 1 figure 1 of the Law regarding SP/SB, defines Union of Workers/Union of Laborers as follows:

      "A Union of Workers/Union of Laborers is an organization established from, by and for the workers/laborers either in companies as well as out of companies, having the nature of being free, open, independent, democratic, and responsible to fight for, to defend as well as to protect the rights and interests of the workers/laborers as well as enhance the welfare of the workers/laborers and their families."

      Whereas based on the Law Number 21 of 2000 regarding Union of Workers/Union of Laborers, it is obvious that a Labor Union is a "group of people", because a Labor Union is an "Organization" of workers/laborers. The word "Organization" obviously indicates a group of people (in this case the workers) sharing the same interest according to the objective of that organization;
8. Whereas the Related Parties along with all its members are also Indonesian tax paying citizens, with National Tax Identification Numbers (*Nomor Pokok Wajib Pajak*, NPWP) as follows:
   - The Related Party I (Subiyanto: 59.659.319.4-451.000)
   - The Related Party II (Idrus: 58.589.590.7-432.000)
   - The Related Party III (Indra Munaswar : 17.018473.3-015.000)
9. Whereas the Related Parties as tax payers do obviously have constitutional rights to defend each Law established by the government jointly with the Parliament including those related to the field of labor affairs like the PPHI Law, because the making of that Law among others has utilized state revenue originating from the tax of the Related Parties and their members;
10. Whereas the revenue from that tax collected by the state among others from the members of the Related Party Is utilized to perform government activities of the state including to fund the existence and activity of the Parliament being lawmakers. A slogan regarding tax payment and the right of tax payers reads “no taxation without representation” is a slogan already developing in the 1750s in the colony countries of England and afterwards even became the trigger of the American Revolution.
11. Whereas thereby tax paying citizens are entitled to voice their aspiration through their representatives in the parliament. Even the existence and activities performed by the Government and the Parliament are funded in its greater part by tax. Therefore, the legislation made by the Government jointly with the Parliament shall voice and orient them to the interest of the people including the Related Parties being part of the people. In the context of the petition to review cases as such (*a quo*), the interest of the Related Party Is that the endorsement of the PPHI Law, particularly the part related to the tenure of *ad hoc* judges has represented the intention and expectation of the Related Parties. Nevertheless, the threat of cancellation of the enactment of the Article which is being petitioned by the Petitioner in the case as such (*a quo*) bear the potential to eliminate the role and the function of the Related Parties to manifest the system of equitable law for workers by presenting the representation of workers at the Court of Industrial Relations;

The Legal Standing Of The Related Party I

12. Whereas the Related Party I is a Labor Union organization having a national scope and having its seat in the Capital of the State bearing the title the Trade Unions Federation of Chemical Energy

and Mining All Indonesian Workers Union (*Federasi Serikat Pekerja Kimia Energi dan Pertambangan Serikat Pekerja Seluruh Indonesia*, F SPKEP SPSI);

13. Whereas being an organization of workers union, the Related Party I has been registered at the Office of Labor at the Municipality Office of South Jakarta under Number 113/V/N/VIII/2001, dated 1 August 2001;
14. Whereas the Related Party I is the General Chairperson and the General Secretary of the Central Board of the F SPKEP SPSI being a representative of the Central Board of the F SPKEP SPSI and is entitled to represent and to act on behalf of the F SPKEP SPSI;
15. Whereas the endorsement of the Related Party I as the General Chairperson is based on the Resolution of National Consultation reference SPKEP SPSI Number Kep.11/MUNAS VI/SPKEP SPSI/VI/2012 and the General Secretary at the National Consultation reference SPKEP SPSI Number Kep. 13/MUNAS VI/SPKEP SPSI/VI/2012;
16. Whereas based on Article 14 of the Articles of Association, the Related Party I bears among others the following functions:
    1. facility to channel the aspiration in the fight for the rights and interests of workers;
    7. representative of the workers in labor institutions;
17. Whereas Article 39 of the Articles of Association states one of the authorities of the Central Board is:
    b. to place a board in tripartite institutions at the national level among others: DEPENAS, ad hoc judge at the Court of Industrial Relations (PHI) in the Supreme Court, DJSN, Central Social Security Agency (Badan Penyelenggara Jaminan Sosial, BPJS), DK3N;
18. Whereas based on that matter the Related Party 1 has the legal standing to become part of the Related Party In the petition of the case under Number 49/PUU-XIV/2016;

The Legal Standing Of The Related Party II

19. Whereas the Related Party II is a Labor Union organization having a national scope and having its seat in the Capital of the State bearing the name of the Federation of Metal, Electronics And Machine Worker's Union of All Indonesian Workers Union (*Federasi Serikat Pekerja Logam, Elektronik, dan Mesin Serikat Pekerja Seluruh Indonesia*, F SP LEM SPSI);
20. Whereas an organization of workers union, the Related Party II has been registered at the Office of Labor and Transmigration of the Municipality of East Jakarta, under evidence number of registration: 609/IV/N/III/2001, dated 10 March 2008;
21. Whereas the Related Party II is the General Chairperson and the Secretary General of the Central Leadership Council of the Federation SPSI (DPP FSP LEM SPSI) being the representative of DPP FSP LEM SPSI and is entitled to represent and to act on behalf of F SP LEM SPSI;
22. Whereas F SP LEM SPSI has the endorsement to become a legal entity association by the Ministry of Law and Human Rights under Number AHU-0000766.AH.01.07.Tahun 2015 with the composition of the organization of an association:
    "Mr. Arif Minardi: the General Chairperson;
    Mr. Idrus: the Secretary General"
23. Whereas the endorsement of the Related Party II as the General Chairperson and the Secretary General is based on Letter of Decision of the DPP FSP LEM SPSI Number Kep.80/DPP F SP LEM/SPSI/XI/2014;
24. Whereas based on that matter the Related Party II has the legal standing to become part of the Related Parties in the petition of the case under Number 49/PUU-XIV/2016;

The Legal Standing Of The Related Party III

25. Whereas the Related Party III is a Labor Union organization having a national scope and having its seat in the Capital of the State bearing the name of the Trade Unions Federation of Textile, Garment, and Leather (*Federasi Serikat Pekerja Tekstil, Sandang, dan Kulit*, FSP TSK);
26. Whereas being an organization of workers union, the Related Party III has been registered at the Sub-Office of Labor at the Administrative City of South Jakarta Number 146/V/N/IX/2001, dated 4 September 2001;
27. Whereas the Related Party III is the General Chairperson and the General Secretary of the National Leadership Council of the Trade Unions Federation of Textile, Garment, and Leather (DPN FSP

TSK) being the representation of the DPN FSP TSK and is entitled to represent and to act on behalf of the FSP TSK;

28. Whereas the endorsement of the Related Party III as the General Chairperson and the General Secretary is based on the Letter of Decision of the Congress of V FSPTSK Number: KEP.X/KONGRES VI FSPTSK/X/2014 regarding the Composition and Personnel of the DPP F SPTSK for the period of 2014-2018:
    the General Chairperson: H. Muhammad Rodja, S.H
    the Secretary General: Indra Munaswar
29. Whereas Article 20 section (1) of the Bylaws of the FSP TSK states:
    "The General Chairperson and Secretary General of the DPN are entitled to represent the organization in and out of the Court."
30. Whereas based thereon the Related Party III has the legal standing to become a part of the Related Parties in the petition of the case under Number 49/PUU-XIV/2016;

C. SUBJECT MATTER OF THE TESTIMONY

1. Whereas basically the Related Parties **DISMISS** the petition of the Petitioner in the case Number 49/PUU-XIV/2016;
2. Whereas the Related Parties plead to the Tribunal of Justices of the Constitutional Court examining and to rule on the case as such (*a quo*), for the sake of the dignity and consistency of each Ruling of the Constitutional Court, may consider the previous Judgments of the Constitutional Court which are also related to the regulation regarding *ad hoc* judges in Court, namely:
    a. The Ruling of the Constitutional Court Number 56/PUU-X/2012, which has been done and pronounced in the Plenary Session of the Constitutional Court open for the public on Tuesday, dated 15 January 2013. That case was reviewed by the Petitioner Jono Sihono, S.H., and M. Sinufa Zebua, S.H. who are respectively the Petitioner being *ad hoc* judges for Disputes of Industrial Relations at the Supreme Court and *ad hoc* judge for Disputes of Industrial Relations at the District Court of Central Jakarta, who reviewed Article 67 section (1) letter d of the PPHI Law. The Verdict of the Ruling of the Constitutional Court Number 56/PUU-X/2012 reads "*To Declare the Dismissal of the Petition of the Petitioners.*"
    b. The Ruling of the Constitutional Court Number 32/PUU-XII/2014, which has been done and pronounced in the Plenary Session of the Constitutional Court open for the public on Monday dated 20 April 2015. The Petitioner DR. Gazalba Saleh reviewed that case, S.H., M.H., et al. (11 Petitioners), who are respectively the Petitioner being an *ad hoc* judge for Criminal Acts of Corruption from various District Courts, who reviewed Article 122 letter e of the Law Number 5 of 2014 regarding Civil Apparatus of the State (Furthermore referred to as the Law regarding ASN). The Verdict of the Ruling of the Constitutional Court Number 32/PUU-XII/2014 reads "*To Declare the Dismissal of the Petition of the Petitioners*";
3. Whereas the Constitution of the Republic of Indonesia of 1945 does not regulate the tenure of *ad hoc* judges, as can be seen from the regulation regarding the tenure of *ad hoc* judges which are different from several applicable laws and regulations in Indonesia, like the Law Number 14 of 2002 regarding the Tax Court, the Law Number 5 of 1986 regarding the State Administrative Judiciary, the Law Number 37 of 2004 regarding Bankruptcy and Suspension of Debt Payment Obligation, the Law Number 31 of 2004 regarding Fishery, the Law Number 46 of 2009 2009 regarding the Court of Criminal Act of Corruption, and the Law Number 26 of 2000 regarding the Court of Human Rights;
4. Whereas absent the regulation the tenure of *ad hoc* judges in the Constitution of 1945, other than being a basic norm (German: *Grundnorm*) it is not proper if it regulates matters of technical nature, it is also caused by the regulation regarding the tenure of *ad hoc* judges being an open legal policy which is fully the authority of the lawmakers, so that it may be amended from time to time by the lawmakers according to the existing requirements and development according to the type and specification and qualification of the relevant office;
5. Whereas due to that consideration, the petition of cases as such (*a quo*) are irrelevant for discussion, because there is no constitutional conflict regarding the regulation regarding the tenure of *ad hoc* judges either at the level of the Court of Industrial Relations as well as at the Supreme Court;

THE PETITIONER HAS NO LEGAL STANDING

1. Whereas the Petitioner has postulated his legal standing as an Indonesian individual citizen being in the position of an *ad hoc* judge at the Court of Industrial Relations being enforcers of Judicial Powers which is independent to perform the judiciary to upholding law and justice as regulated by Article 24 section (1) of the Constitution of 1945;
2. Whereas in performing the independent power to uphold the law, the Petitioner has postulated that the existence of Article 67 section (2) of the PPHI Law which determines the periodization of the tenure of *ad hoc* judges is assumed to harm the Petitioner in carrying out his duty as *ad hoc* judge;
3. Whereas based on the description of the legal standing of the Petitioner, the Related Parties opine that the Petitioner has no legal standing for filing a petition as such (*a quo*), because truly the Petitioner is a representative of workers union granted the trust/recommendation by the existing Union of Workers/Union of Laborers to uphold the mandate to become an *ad hoc* judge at the Court of Industrial Relations (PHI);
4. Whereas the presence of *ad hoc* judges at the Courts of Industrial Relations (PHI) is quite unique, because it requires the proposal from the Union of Workers/Union of Laborers as one of the absolute requirements whenever one wish to become an *ad hoc* judge;
5. Whereas moreover, *ad hoc* judges at the Courts of Industrial Relations (PHI) which have been elected at one time may be honorably dismissed at the request of the organization of entrepreneurs or the organization of workers/the organization of laborers having proposed them (vide Article 67 of the PPHI Law);
6. Whereas that matter confirms that each individual *ad hoc* judge, although they shall relinquish their office as executive board of Union of Workers/Union of Laborers as well as the Association of Entrepreneurs whenever they are elected to become *ad hoc* judge, they may not relinquish the essence of their origin of existence being the representation of Union of Workers/Laborers or Association of Entrepreneurs;
7. Whereas the presence of *ad hoc* judges also confirms that the dimension of labor law affairs is tightly linked with the pattern of the involvement of 3 (three) parties who are frequently named as "tripartite", they are really present in the judicative institution, so that it is not proper whenever the extension of the tenure of an *ad hoc* judge may be conducted continuously up to the retirement age like the case of career judges, which would eliminate the role and the function of Labor Unions as well as the Association of Entrepreneurs;
8. Whereas moreover, according to the Related Parties, the Petitioner either in his petition, the witnesses who have been presented by the Petitioner, and the experts who have been presented by the Petitioner could not firmly explain and substantiate, where the constitutional loss or potential constitutional loss is. What appears is only a loss which has no constitutional nature, such as can be perceived based on normal reasoning of the Petitioner who has known the consequence of the tenure as well as the sum of allowance gained, so that it raises the impression as if the motivation of dedication as *ad hoc* judge being an honorable office is collided against the intention of perpetuating the tenure and the assumption of merely personal economic motivation;
9. Whereas therefore, the petition of the case as such (*a quo*) is indeed inappropriate for its proceeding into its examination and shall not be accepted, because the Petitioner is truly only an individual granted with the opportunity based on the proposal of the Union of Workers/Union of Laborers or the Association of Entrepreneurs for dedication as an *ad hoc* judge in a certain tenure and which could be revoked from time to time by the Union of Workers/the Union of Laborers or the Association of Entrepreneurs, and that there is no constitutional loss for the Petitioner;

THE PETITIONER HAS COMMITED A LOGICAL FALLACY VIS-À-VIS THE URGENCY OF THE ROLE AS REPRESENTATION OF THE UNION OF WORKERS/THE UNION LABORERS AND THE ORGANIZATION OF ENTREPRENEURS AT THE COURT OF INDUSTRIAL RELATIONS

1. Whereas prior to the enactment of the PPHI Law in settling industrial disputes relations based on the Law Number 22 of 1957 regarding the Settlement of Labor Disputes and the Law Number 12 of 1964 regarding Severance of Employment Relationship in Private Companies, there were a

Regional Committee for the Settlement of Labor Disputes (*Panitia Penyelesaian Perselisihan Perburuhan Daerah*, P4D) and a Central Committee for the Settlement of Labor Disputes (*Panitia Penyelesaian Perselisihan Perburuhan Pusat*, P4P). At those two institutions there was a representation from the workers unions/labor unions and the organization of entrepreneurs in settling problems of labor affairs at the time;

2. Whereas in its development there were several difficulties and disappointments in the execution of the Law Number 22 of 1957 regarding the Settlement of Labor Disputes and the Law Number 12 of 1964 Regarding Severance of Employment Relationship in Private Companies, which generally could not manifest dispute settlements quickly, namely:
   a. as a consequence of the enactment of the Law Number 5 of 1986 regarding State Administrative Judiciary at the time, appeal was made possible against the ruling of the P4P by a party not content with the High Court of State Administration, so that a long time would be needed and processes became more complicated, so that there was absence of legal certainty vis-à-vis the judgments of the P4P;
   b. The process of decision making at the P4D and the P4P was closed;
   c. The representation of laborers at the P4D and the P4P were monopolized by one union;
   d. The existence of the veto right possessed by the Minister of Manpower, which could be used to cancel or postpone the execution of the decision of the P4P. This led to legal uncertainty of the decision of the P4P;
   e. Only labor unions/workers union could have a case with the P4.
3. Whereas the matter herein-above became a base for the establishment of the PPHI Law, which furthermore led to the birth of the current Court of Industrial Relations, whereby the *ad hoc* judge became a function of the representation of the workers unions/labor unions and the organization of entrepreneurs;
4. Whereas reference was made to the provision regarding *ad hoc* judges as was regulated by the Law Number 48 of 2009 Regarding Judicial Powers (furthermore referred to as the Law regarding Judicial Powers), namely:
   Article 1 figure 9
   "Ad hoc judges are judges of temporary nature having the expertise and experience in certain fields to examine, to adjudicate, and to rule on cases whose appointment is regulated by the laws."
   Article 32 section (1) and Elucidation
   "Ad hoc judges can be appointed at a special court to examine, to adjudicate, and to rule on cases requiring the expertise and experience in certain fields in a certain period."
   "Understood "in a certain period" is the temporary nature according to the provision of laws and regulations.
   The objective of appointment of ad hoc judges is to assist the settlement of cases requiring the special expertise like for instance in banking crime, tax crime, corruption, children, ***disputes of industrial relations****, telematics (cyber-crime)."*
   The Elucidation to the Law regarding Judicial Powers roman I letter e reads:
   "The regulation regarding ad hoc judges of temporary nature and having the expertise as well as experience in certain fields to examine, to adjudicate, and to rule on a case."

5. Whereas the Law regarding Judicial Powers has regulated as such, that *ad hoc* judges are of temporary nature and for a certain period, whereby the definition of a certain period is regulated further in laws. This is the more confirming that the regulation regarding the tenure of *ad hoc* judges is an open legal policy which is fully the authority of the lawmakers, as is in line with the legal consideration in the Ruling of the Constitutional Court Number 56/PUU-X/2012 and Number 32/PUU-XII/2014;
6. Whereas the function of the representation of the workers unions/labor unions and the organization of entrepreneurs as *ad hoc* judge at the Court of Industrial Relations as well as at the Supreme Court is based on the particularity and complexity of occurring cases of industrial relations and which is also the competence and absolute authority of the Court of Industrial Relations;
7. Whereas this urgency of the role and function of representation is the base of the differentiator and the heart of the Court of Industrial Relations *per se*. This may be seen from the provision of Article 63 section (2) of the PPHI Law, which mandates that candidate *ad hoc* judges be based on the

proposal of the workers unions/labor unions and the organization of entrepreneurs, and Article 67 section (1) letter f of the PPHI Law which mandates that *ad hoc* judges at the Courts of Industrial Relations and *ad hoc* judges for Industrial Relations at the Supreme Court may be dismissed from their offices at the request of the organization of entrepreneurs or the organization of workers/organization laborers proposing them;

8. Whereas an *ad hoc* judge being the representation of the element of workers unions/labor unions and of the organization of entrepreneurs is philosophically as well as contextually based on his/her experience may understand an occurring problem of industrial relations and perceive a problem rather as a social structure, whereby there are various interests competing therein, and is not limited to the application of the law only;
9. Whereas Bagir Manan in his speech as Chief Justice of the Supreme Court at the formal opening of the Court of Industrial Relations (PHI) in Medan in 2006 has confirmed that the Court of Industrial Relations (PHI) is established as a special court based on the following considerations:
    1) Some cases regarding update issues have come up in the public in the era of post "*Reformasi*", among others the issue regarding human rights, labor, anti-corruption, fishers, and others;
    2) The career judges have not at all the special expertise and concern to respond to those issues;
    3) The Government and the Supreme Court have assessed, that *ad hoc* judges from the workers unions/labor unions or the association of entrepreneurs are those who understand issues of labor and the realm of manpower well.

    Whereas based on such consideration, the Court of Industrial Relations (PHI) as a special court is established, whereby its judges consist of elements of judges being civil servants/Supreme Court Justices, *ad hoc* judges from the workers unions/labor unions or the association of entrepreneurs;
10. Whereas thereby the tenure of *ad hoc* judges becomes important to enable the principle of representation as well as contextual understanding to be always represented in each composition of the Tribunal of Judges at the Court of Industrial Relations as well as at the Supreme Court;
11. Whereas the *ad hoc* judges at the Courts of Industrial Relations indeed have 3 (three) characteristics, namely:
    a. Special, namely they have the expertise and experience in certain fields to examine, to adjudicate, and to rule on cases regarding disputes of industrial relations;
    b. Temporary, namely the limited tenure of each individual *ad hoc* judge as is regulated by Article 67 section (2) of the PPHI Law;
    c. Permanent, namely the always existing position of *ad hoc* judges to the extent of existence of disputes of industrial relations in Indonesia, they always become member judges at the Tribunal of Judges at the Courts of Industrial Relations, and they are always based on recommendation of the workers unions/labor unions as well as the organization of entrepreneurs;
12. Whereas based on the elucidation mentioned herein-above, it is obvious that the recruitment mechanism and philosophy of *ad hoc* judges at the Courts of Industrial Relations and *ad hoc* judges in Industrial Relations at the Supreme Court are quite different if compared to the career judges in general;
13. Whereas indeed if the tenure of *ad hoc* judges is regulated to emulate that of the career judges, then it obviously would eliminate *the urgency of* the role and function of representation of the workers unions/labor unions and the organization of entrepreneurs and would eliminate the meaning of an *ad hoc* judge *per se*, so that it would cause confusion and legal uncertainty in its implementation;
14. Whereas based on elucidation mentioned herein-above, the Related Parties opine that Article 67 section (2) of the PPHI Law is in line with and is not contrary to Article 24 section (1), Article 27 section (1) and section (2), and Article 28D section (1) of the Constitution of 1945. Indeed, if the petition as such (*a quo*) is granted, it would turn unconstitutional, because it would violate the principle of legal certainty as has been mandated in Article 1 section (3) and Article 28D section (1) of the Constitution of 1945 and several laws and regulations already in force;
15. Whereas moreover, based on practice, indeed for the Related Parties the meaning of Article 67 section (2) of the PPHI Law as has been elucidated also by the witness Fauzan and the witness Alfil Syahril in the case as such (*a quo*) at the previous trial, a mechanism of appointment of *ad hoc* judges for the second term directly by the Chief Justice of the Supreme Court, and without the requirement of repeated recommendation/proposal of the workers unions/labor unions as well as the organization of entrepreneurs who made the first recommendation/proposal is unconstitutional

because it is contrary to the principle of legal certainty as has been mandated by Article 1 section (3) and Article 28D section (1) of the Constitution of 1945;

THE REGULATIONN OF THE TENURE OF *AD HOC* JUDGES IS NOT DISCRIMINATIVE, AND IS IN ACCORDANCE WITH THE CONCEPT OF LABOR, AND IS CONSTITUTIONAL

1. Whereas the difference of the regulation of the tenure of *ad hoc* judges with that of the career judges in general is obviously based on the nature, character and need of such office which are different. Therefore, the phrase discriminative is irrelevant to be applied as a reference of contradiction. This is also confirmed by the Tribunal of Justices of the Constitutional Court in the Ruling of the Constitutional Court Number 56/PUU-X/2012 and the Ruling of the Constitutional Court Number 32/PUU-XII/2014 stating that:

   "The difference of treatment as mentioned in Article 28I section (2) of the Constitution of 1945 is justified to the extent that the nature, character and need of such office are different. It will indeed raise discrimination if different matters are treated equally, or reversely same matters are treated differently. According to the Court, although between ad hoc judges in Industrial Relations at the Supreme Court, ad hoc judges at the Courts of Industrial Relations and other ad hoc judges, judges, and Supreme Court Justices share the equal status as judges, but the character and need of their respective offices are different."

2. Whereas with regard to the consequences of having relinquished certain employments as well as offices like the office of the executive board of the organization of workers/laborers, and only having a tenure of 5 years and which can only be extended one more term of tenure as has been testified at the previous trial in the case as such (*a quo*) by namely the witness Fauzan and the witness Alfil Syahril, the Petitioner should have been aware of it from the beginning when requesting the recommendation of the workers unions/labor unions, as it is regulated by Article 66 section (1) letter k and Article 67 section (2) of the PPHI Law;
3. Whereas the Petitioner as an *ad hoc* judge at the Court of Industrial Relations has currently an obvious decent living, as may be substantiated by the enactment of the Regulation of the President of the Republic of Indonesia Number 5 of 2013 Regarding Financial Entitlement and Facilities for *Ad hoc* Judges, which has guaranteed for each *ad hoc* judge either at the Court of Industrial Relations as well as at the Supreme Court the form of the following financial entitlements and facilities:
   a. Allowance, namely;
      i. IDR. 17,500,000.00 monthly for *ad hoc* judges at the first level or the Court of Industrial Relations; and
      ii. IDR. 32,500,000.00 monthly for *ad hoc* judges at the level of cassation or the Supreme Court;
   b. State housing;
   c. Transportation facility;
   d. Health care benefit;
   e. Security guaranty in carrying out his/her duty;
   f. Official travel expenses; dan
   g. Tribute money.

4. Whereas the Regulation of the President Number 5 of 2013 regarding Financial Entitlement And Facilities for *Ad hoc* Judges is a quality improvement of the financial entitlements and facilities received by *ad hoc* judges, whereby prior to the enactment of that regulation, the quality of those entitlements and facilities was much lower;
5. Whereas the much better improvement of the allowance and facilities has attracted the more parties to become *ad hoc* judges either at the level of the Court of Industrial Relations as well as at the Supreme Court, if compared to the initial period of the establishment **of** the Court of Industrial Relations;

6. Whereas according to the Related Parties, Article 27 section (2) of the Constitution of 1945 cannot be made a test-stone in the petition as such (*a quo*) because the *ad hoc* judge at the Court of Industrial Relations is not included in the context of the granting of an employment which emphasizes the requirement of obtaining a decent living;
7. Whereas the existence of Article 27 section (2) is more appropriate to be interpreted for workers/laborers existing in the context of employment relationship subject to the absolute requirement of at least fulfilling the elements of work, wage, and work order;
8. Whereas the existence of one judge should not fulfill those 3 (three) elements, particularly the element of work order, because that bear the potential to disturb the independence of the judge in deciding on a case;
9. Whereas therefore, it becomes irrelevant for the Petitioner to apply Article 27 section (2) of the Constitution of 1945 as a test-stone in the case as such (*a quo*), because the article being the object of the petition submitted is not discriminative and is constitutional;
10. Whereas based on those matters and arguments, the Related Parties plead to the Tribunal of Justices to dismiss the entire petition of the Petitioner in the case as such (*a quo*);
    Whereas regardless of the subject matter of the testimony as elucidated herein-above, the Related Parties expect that the petition as such (*a quo*) as submitted by the Petitioner is not founded on the factor of facility and economy which to date are much better from the previous ones, and which will be lost following the tenure of the Petitioner when it has reached the limit of maximum 10 (ten) years;

D. PETITUM

Based on the matters mentioned herein-above, the Related Parties plead to the Tribunal of Justices of the Constitutional Court to rule as follows:

1. To dismiss the entire petition to review Article 67 section (2) of the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations submitted by the Petitioner;
2. To declare the Petitioner has no legal standing in the filing of his petition to review Article 67 section (2) of the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations;
3. To dismiss the entire petition to review Article 67 section (2) of the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations submitted by the Petitioner;
4. To declare that the provision of Article 67 section (2) of the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations is not contrary to the Constitution of the Republic of Indonesia of 1945;
5. To declare that the provision of Article 67 section (2) of the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations remain to have legal binding force;

Or, if the Tribunal of Justices of the Constitutional Court opines otherwise, the Related Parties plead a ruling *ex aequo et bono.*

The Related Parties have attached evidences marked as evidence of PT.I-1 up to evidence of PT. III-6.

1. Evidence PT.I-1: Photocopy of the original Resident Identity Card of R Abdullah, the General Chairperson F SPKEP SPSI;
2. Evidence PT.I-2: Photocopy of the original Resident Identity Card of Subiyanto, the General Secretary of F SPKEP SPSI;
3. Evidence PT.I-3: Photocopy of the instrument of evidence of the registration of the SPKEP SPSI;
4. Evidence PT.I-4: Photocopy of the original Resolution of the National Consultation SPKEP SPSI No. Kep. 13/MUNAS VI/SPKEP SPSI/VI/2012;
5. Evidence PT.I-5: Photocopy of the Articles of Association and the Bylaws of the SPKEP SPSI;
6. Evidence PT.II-1: Photocopy of the Resident Identity Card of Arif Minardi;
7. Evidence PT.II-2: Photocopy of the Resident Identity Card of Idrus;
8. Evidence PT.II-3: Photocopy of the Letter of Decision of the DPP FSP LEM SPSI No: Kep.80/DPP F SP LEM/SPSI/XI/2014;

9. Evidence PT.II-4: Photocopy of the Decree of the Minister of Law and Human Rights Number AHU-0000766.AH.01.07.TAHUN 2015 regarding the Endorsement of the Establishment of the Legal Entity of the Association of the Federation of Metal, Electronics And Machine, SPSI dated 18 May 2015;
10. Evidence PT.II-5: Photocopy of the Articles of Association and the Bylaws of the SP LEM SPSI;
11. Evidence PT.II-6: Photocopy of the Number of Evidence of the Registration of F SP LEM SPSI by the Sub-Office of Labor and Transmigration of East Jakarta;
12. Evidence PT.II-7: Photocopy of the original Coordination Meeting of the DPP FSP LEM SPSI stating that Arif Minardi (the General Chairperson) and Idrus (the Secretary General) represent the F SP LEM SPSI in the conduct of activities of constitutional review at the Constitutional Court;
13. Evidence PT.III-1: Photocopy of the Resident Identity Card of H Muhamad Rodja;
14. Evidence PT.III-2: Photocopy of the Resident Identity Card of Indra Munaswar;
15. Evidence PT.III-3: Photocopy of the Member Card of the Federation of Labor Unions TSK SPSI;
16. Evidence PT.III-4: Photocopy of the instrument of evidence of the registration of the F SP TSK SPSI;
17. Evidence PT.III-5: Photocopy of the Letter of Decision of the Congress of the V FSPTSK Number: KEP.X/KONGRES VI FSPTSK/X/2014 regarding the Composition and Personnel of the DPP F SPTSK period 2014-2018;
18. Evidence PT.III-6: Photocopy of the Articles of Association and the Bylaws of the FSP TSK SPSI.

Besides, the Related Parties have presented one expert, Andari Yurikosari, who submitted his/her testimony at the trial of the Court dated 10 October 2016, in the following essence:

1. Regarding the Legal Standing of the Petitioner

The legal standing of the Petitioner in the petition to review presented to the Constitutional Court according to the Ruling of the Constitutional Court Number 006/PUU-III/2005 in conjunction with the Ruling Number 11/PUU-V/2007, that the submission of the petition to the Constitutional Court should be based on the existence of constitutional loss namely the existence of constitutional rights of the Petitioner which have been harmed under the Constitution of 1945 based on a Law petitioned for its review, and by the granting of the petition, the constitutional loss may be avoided. The Petition submitted in the possibility of constitutional loss under the Article 24 section (1) of the Constitution of 1945 due to the execution of Article 67 of the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations, is according to the expert not at all reasoned, because Article 24 regulates the Judicial Powers as regulated by the Laws, the understanding of this Article according to the expert is regarding how Judicial Powers being a judicial body exists in the space of the Supreme Court. The Petitioner is an *ad hoc* judge at the Court of Industrial Relations specially appointed according to the mandate of the Law Number 2 of 2004, being a manifestation of the system of representation of a party in employment relations namely being representative of the entrepreneurs and representative of the workers.

Ad hoc judges are *not* career judges who according to the nature and his/her interests are special judges appointed according to the field of their expertise. Different from the *ad hoc* judges at the Tax Court for example, *ad hoc* judges at the Courts of Industrial Relations as well as at the Supreme Court are judges whose placement is proposed by the parties as a *representation* in the settlement of disputes of industrial relations. The mandate of the settlement of disputes of industrial relations is dispute settlement by the parties (bipartite negotiation), which if cannot be settled through bipartite negotiation, then it may be settled by other means through mediation, conciliation, or arbitration as well as through the lane of the Court of Industrial Relations. As of the enactment of the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations, then the aspiration of the parties to settle disputes of industrial relations according to the settlement of the parties with the assistance of arbitrator like mandated by the Law Number 22 of 1957 regarding the Settlement

of Labor Disputes and the Law Number 12 of 1964 regarding the Settlement of Labor Disputes in Private Companies remains maintained.

The objection of the parties that dispute settlement of labor affairs may be sued at the High Court of State Administration based on the Law Number 5 of 1986 regarding the Court of State Administration, namely by the submission of the petition for administrative appeal based on the decision of the Regional Committee for the Settlement of Labor Disputes (P4D) and the Central Committee for the Settlement of Labor Disputes (P4P) may be eliminated. The decision rendered by the P4D and the P4P is assumed to be a decision rendered by a state administration official (in this case by an arbitrator being a Civil Servant in the environment of the Ministry of Manpower and Transmigration at the time), so that it may be sued at the High Court of State Administration. The existence of the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations reflects the existence of the freedom of the parties *per se* to determine how to settle their dispute having the nature of *win win solution* for both parties, because settled on their own by the parties and by the arbitrators at the system of settlement of non-litigation in this case by a mediator, conciliator and arbitrator, as well as by judges at the Court of Industrial Relations who settle trials based on Civil Procedural Law having a special nature, which distinguishes it from the system of settlement in a trial based on the Civil Procedural Law in general, among others not recognizing the appeal system and the parties who are not satisfied at the settlement of the first level at the Court of Industrial Relations may file direct cassation at the Supreme Court.

The difference of the system of settlement in the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations, causes also the systemic difference in several settlement of cases, like the existence of wage process, for an injunction ruling can be petitioned in disputes on severance of employment relations, the precondition that lawsuit at the Court of Industrial Relations can only be presented if there is an evidence of recommendation of the mediator, whereby one of the parties objects or does not comply with the recommendation of the mediator obviously illustrates the position of an *ad hoc* judge at the Court of Industrial Relations has a special nature, which reflects the existence of representation of the parties in industrial relations, namely from a Labor Union and from the Union of Entrepreneurs. Industrial relations based on Article 1 figure 25 of the Law Number 13 of 2003 regarding Manpower is a system of relations established between the actor in the process of the production of goods and/or services consisting of the elements of the entrepreneur, the workers/laborers, and the Government which are based on the values of Pancasila and the Constitution of the Republic of Indonesia of 1945. Different from an understanding of employment relationship, namely relations arising due to the existence of employment agreement as mandated by Article 50 of the Law Number 13 of 2003 regarding Manpower, industrial relations reflect the relations between the parties namely the workers and the entrepreneurs which involves the intervention of the State in each settlement of dispute.

The settlement of disputes through the Court of Industrial Relations in this case is also regarded as settlement by the parties (through the system of representation by *ad hoc* judges), so that the role of the State in this case is retained, because the settlement is conducted at the Court of Industrial Relations by career judges representing the element of the State. According to the expert, the constitutional loss submitted by the Petitioner based on Article 27 section (1) and section (2) as well as Article 28D section (1) of the Constitution of 1945 also does not fulfill constitutional loss, because Article 27 section (1) and section (2) of the Constitution of 1945 regulates regarding equality of the right of and the standing before the law as well as the right of work and decent living. Juridically the role and position of an *ad hoc* judge in a trial at the Court of Industrial Relations is equal, there is no difference in position in a trial between *ad hoc* judges and career judges in decision making, so that according to the expert there is no violation against the equality of rights and the standing before the law. In terms of the right of work and decent living, the position of an *ad hoc* judge is juridically also not contrary to Article 27 section (2) of the Constitution of 1945, because *ad hoc* judges according to the expert is a special profession, which procedure of recruitment and tenure has been determined based on laws and regulations.

Ad hoc judges are by status indeed different from the career judges who are as of their appointment in the environments of the judiciary beneath the Supreme Court, career judges are Civil Servants who are juridically subject to the law regarding Government Employees which currently is the Law Number 5 of 2014 regarding the Civil Apparatus of the State. Career judges are included in the understanding of one of Government Employees in that Law Number 5 of 2014. Nevertheless, *ad hoc* judges are not included in the understanding of the Civil Apparatus of the State, because of their special nature. The Civil Apparatus of the State only consists of Civil Servants and Government Employees subject to Employment Agreement. *Ad hoc* judges at the Courts of Industrial Relations are due to their special nature indeed appointed by Presidential Decree at the proposal of the Chief Justice of the Supreme Court, however, their status is indeed different from the status of career judges being Civil Servants in the environment of the Ministry of Law and Human Rights. *Ad hoc* judges having a special nature also knows and understand that their placement at the Court of Industrial Relations is based on nomination by a Labor Union or the Union of Entrepreneurs whose position may well be revoked by a Labor Union or the Union of Entrepreneurs, with a limited tenure and if extended again, the tenure remains dependent from the recommendation of their respective Labor Union or the Union of Entrepreneurs.

Whereas as of appointment as an *ad hoc* judge, the other employment previously owned by *ad hoc* judges shall be terminated, that is also already known by the *ad hoc* judges, that *ad hoc* judges only have a certain tenure which can expire if no repeated recommendation is obtained from a Labor Union or the Union of Entrepreneurs, while the constitutional rights of the *ad hoc* judges are not ignored and there is no loss based on the Constitution of 1945 particularly with regard to Article 27 section (1) and section (2). Pursuant to Article 28D of the Constitution of 1945, each person is entitled to guaranty of recognition for the protection and equitable legal certainty as well as equal treatment before the law, and each person is entitled to work as well as to obtain rewards and equitable and decent treatment in employment relationship, according to the expert, *ad hoc* judges at the Courts of Industrial Relations are not bound by employment relationship, however, they hold their office based on Presidential Decree. An employment relationship is a relation between workers and employees which is based on employment agreement and is thereby subject to the Law Number 13 of 2003 regarding Manpower which recognizes the method of expiry of employment relationships. The occupation of *ad hoc* judges does not commence with employment relationship and thereby is not based on employment agreement, neither does the method of expiry fulfill the provision of the Law Number 13 of 2003 regarding Manpower mentioning the causes for expiry like demise of the worker, court judgment, Severance of Employment Relationship and, due to the expiry of employment agreement. While according to Article 67 section (1) of the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations, *ad hoc* judges can be dismissed from their office, because of demise, at own accord, physical or mental illness continuously for 12 (twelve) months, achievement of the age of 62 years for judges at the Court of Industrial Relations, incapable to carry out duties, at the request of the organization of workers unions/labor unions or the union of entrepreneurs who proposed them and has completed his/her tenure.

2. Regarding the Legal Standing of the Related Party

The legal standing of the Related Parties as representative of Labor Unions is fulfilled, because based on Article 14 section (2) of the Regulation of the Constitutional Court Number 06/PMK/2005 regarding the Guidance to Proceed in Cases of Review of the Laws, the Related Parties have direct interest and are affected by the subject matter of the petition. The position of the Related Parties in this case are representatives of Labor Unions who could juridically be harmed if the Honorable Justices of the Constitutional Court grant the petition of the party, because if the petition of the *ad hoc* judges to become permanent judges like the career judges is granted, they would no longer represent the interest of the labor unions who assign *ad hoc* judges at the Courts of Industrial Relations as representative of the union of workers. The existence of the Related Parties namely from the Trade Unions Federation of Chemical Energy and Mining All Indonesian Workers Union (*Federasi Serikat Pekerja Kimia Energi dan Pertambangan Serikat Pekerja Seluruh Indonesia*, F SPKEP SPSI), the Federation of Metal, Electronics And Machine Worker's Union All Indonesian Workers Union (*Federasi Serikat Pekerja Logam, Elektronik, dan Mesin*

Serikat Pekerja Seluruh Indonesia, F SP LEM SPSI), the Trade Unions Federation of Textile, Garment, and Leather (*Federasi Serikat Pekerja Tekstil, Sandang, dan Kulit*, FSP TSK) according to the expert have legally fulfilled the provision as related parties. According to the Law Number 21 of 2000 regarding the Unions of Workers, Article 1 figure 4, the Federation of Labor Unions is a compound of Union of Workers/Unions of Laborers, the Federation of Labor Unions is a compound of Labor Unions which scope represents the workers union in general present in its Federation. According to Article 4 section (1) of the Law Number 21 of 2000 regarding Union of Workers, a Labor Union or Union of Laborers, the Federation and its Confederation have the objective to render protection, defense of the rights and interests as well as enhance the decent welfare for the workers/laborers and their families. Article 4 section (2) of the Law Number 21 of 200 regarding Labor Unions also render an understanding that a Confederation of Labor Unions is a party in the settlement of disputes of industrial relations. As a party in the settlement of disputes of industrial relations, according to Article 1 figure 19 in conjunction with Article 70 section (2) of the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations, an *ad hoc* judge is an *ad hoc* judge at a Court of Industrial Relations and an *ad hoc* judge at the Supreme Court whose appointment is at the proposal of workers unions/labor unions and the organization of entrepreneurs. For the first time *ad hoc* judges at the Courts of Industrial Relations at the District Court shall be at least 5 (five) people from the Labor Unions and 5 (five) people from the Union of Entrepreneurs, and therefore the Related Parties in the filing of this petition share an interest with the petition of the Petitioner, because the position of an *ad hoc* judge at a Court of Industrial Relations is indeed a proposal of a Labor Union and if the petition of the petitioner seeks the equalization of the position of an *ad hoc* judge to that of a career judge, then in such a position an *ad hoc* judge does no longer represent a Labor Union and therefore harms a Labor Union constitutionally, because it does no longer reflect the proposal and representation of a Labor Union which is philosophically the root of the system of industrial relations which requires that the position of the party in employment relationship be protected by the state in cases of disputes of industrial relations.

3. Regarding the Petition Submitted by the Petitioner

According to Article 67 section (1) of the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations, *ad hoc* judges are dismissed from their office because of demise, at own accord, physical or mental illness for continuously 12 (twelve) months, having reached the age of 62 years for judges at the Court of Industrial Relations, incapable to carry out duties, at the request of the organization of workers unions/labor unions or the union of entrepreneurs who have proposed him/her and has completed his/her tenure. The status of *ad hoc* judges according to the expert is based legally on the laws and regulations, which indeed require the proposal of the organization of workers unions/labor unions or the union of entrepreneurs. With regard to the tenure of judges according to Article 67 section (2) of the Law Number 2 of 2004 regarding the Union of Workers, the tenure of judges is for a period of 5 (five) years and which can be extended for 1 (one) more tenure, which obviously illustrates that the nature *ad hoc* judges is special and is similar like that of the other courts employing *ad hoc* judges. However, that illustrates specially that *ad hoc* judges at the Courts of Industrial Relations are judges representing the parties who are in dispute, namely the party of the Workers and the party of the Entrepreneurs like that as mentioned in Article 67 section (1) of the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations.

The expert does not share the opinion with regard to the existence of constitutional loss like petitioned by the *ad hoc* judge in his petition in the case of petition Number 49/PUU-XIV/2016. The constitutional loss is a loss as illustrated by the causal relation between a loss and the enactment of a Law petitioned for review. Juridically the petitioner being an *ad hoc* judge is indeed protected of his rights based on Article 67 section (1) and Article 67 section (2) of the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations, the presence of *ad hoc* judges is quite respected and the expiry of the office is also regulated separately. Appointed *ad hoc* judges and who afterwards work at the Court of Industrial Relations at the District Court and at the Supreme Court, is an appreciation and respect to the expertise of the *ad hoc* judges from those they represent namely

a Labor Union or the Union of Entrepreneurs, and are thereby expected to represent the voice of the parties having an interest in disputes of industrial relations. *Ad hoc* judges also undergo process of recruitment to become *ad hoc* judges by the Supreme Court and are thereby selected *ad hoc* judges complying with the qualification and based on their expertise.

The presence of *ad hoc* judges based on Article 67 section (1) and section (2) of the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations is quite protected, because the presence of *ad hoc* judges can only be terminated in matters as regulated by that article, save to *ad hoc* judges committing criminal acts who can be dismissed in accordance with the provision of Article 68 and Article 69 of the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations. If the petition of the petitioner is granted, then the position of an *ad hoc* judge at a Court of Industrial Relations is no longer in accordance with the spirit of an *ad hoc* judge who due to his/her special nature and is a form of appreciation to that office, simultaneously eliminating the meaning of the system of representation from the spirit and philosophy of the settlement of disputes of industrial relations. At the end the parties having an interest in this case namely a Labor Union and the Union of Entrepreneurs are no longer represented in the settlement of disputes of industrial relations through the Court of Industrial Relations and the Supreme Court. The equalization of the expiry of the tenure of *ad hoc* judges with that of the career judges being judges having the status of Civil Servants is also contrary to the Law Number 5 of 2014 regarding the Civil Apparatus of the State, because according to Article 1 figure 2, employees being Civil Apparatus of the State who are hereinafter referred to as ASN Employees are Civil Servants and Government Employees by virtue of Employment Agreements appointed by the Supervising Official of Government Employees and is tasked with the duty in a certain Government office or tasked with other state duties and is given salary based on laws and regulations.

Ad hoc judges at the Courts of Industrial Relations are obviously no Civil Servants and neither are they Government Employees pursuant to Employment Agreement, because they are appointed and elected through a special procedure of recruitment of *ad hoc* judges for the Courts of Industrial Relations, different from the process of recruitment and appointment of career judges who are subject to the Law regarding the Civil Apparatus of the State. Therefore, the expiry of the tenure of an *ad hoc* judge at a Court of Industrial Relations and at the Supreme Court in cases of settlement of disputes of industrial relations are also different. Career judges may terminate their tenure in accordance with retirement age according to the provisions of the Law regarding the Civil Apparatus of the State, while the tenure of an *ad hoc* judge at a Court of Industrial Relations expires according to the mandate according to the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations under Article 67 section (1) and section (2). *Ad hoc* judges cannot receive a retirement pay like the career judges as Civil Servants, whose frame of salary and their period of retirement are regulated by the Law regarding the Civil Apparatus of the State. *Ad hoc* judges whose tenure expires as *ad hoc* judges are given an expiry allowance the for their position as *ad hoc* judges, and not retirement pay. That difference is not a constitutional loss, because the nature and philosophical value of *ad hoc* judges are indeed different from career judges.
The protection for *ad hoc* judges is also strongly determined by the system of representation either by a Labor Union as well as the Union of Entrepreneurs and therefore even if *ad hoc* judges are replaced prior to the expiry of their tenure by the parties who have proposed them (in this case a Labor Union and the Union of Entrepreneurs), that is subject to the mandate of the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations, whereby indeed only a Labor Union and a Labor Union who can revoke their assignment of an *ad hoc* judge at a Court of Industrial Relations, save to dismissal by the state, because of an *ad hoc* judge commits a crime.

Ad hoc judges at the Courts of Industrial Relations based on Article 67 section (1) and section (2) of the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations, also recognize that the expiry of their tenure at the Court of Industrial Relations and the Supreme Court is based on the provisions of the laws and regulations, which determine its temporary nature and depending on the recommendation of the party who they represent, either a Labor Union or the Union of Entrepreneurs. The parties have known from the beginning that a previous employment of an *ad hoc* judge should be

terminated, after becoming an *ad hoc* judge and the guaranty on legal certainty to work as an *ad hoc* judge is limited only to the extent of the tenure and the extension of that tenure if necessary. The protection of the right of work and decent living which reflects the presence of protection by the State for the workers as based on Article 27 section (1) and section (2) as well as Article 28D of the Constitution of 1945, means philosophically that the state protects the interest of the workers against the arbitrariness against the right of and decent employment. That guaranty for the certainty of employment is according to the limit of time applied for the employment as relevant. An unconstitutional violation against the laws will result in the annulment of the protection and legal certainty in employment which is protected by the Constitution of 1945. The right of the *ad hoc* judges at the Courts of Industrial Relations with regard to the expiry of their tenure is obviously protected based on Article 67 of the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations, which is different from the expiry of the tenure of career judges having the status of Civil Servants being subject to the Law Number 5 of 2014 regarding Civil Apparatus of the State.

[2.8] The Related Parties submitted their testimony in writing against the petition of the Petitioner, which was received at the trial of the Court on the date 10 October 2016 in the following essence:

1. Whereas Article 67 section (2) of the Law Number 2 of 2004 determines, "The tenure of *ad hoc* judges for period of 5 (five) years can be extended for 1 (one) more tenure."
2. Whereas the limitation of the tenure of *ad hoc* judges is as intended, that the presence of *ad hoc* judges at the Courts of Industrial Relations (PHI) is similar to that of the other *ad hoc* judges, namely that it has a special nature and is temporary.
3. In the *Kamus Hukum Lengkap* (Complete Legal Dictionary) by Rocky Marbun, S.H., M.H., *et al*., the understanding of "*ad hoc"* is
   - for a certain objective,
   - something which is created or somebody proposed for a certain objective and period,
   - it has a special nature and is temporary.

   While in the "*Kamus Populer Internasional*" (International Popular Dictionary) by Budiono MA, the meaning of "*ad hoc"* is *special*.
4. Whereas based on that understanding, then "*ad hoc*" means temporary and/or special, which means it is not permanent, and/or has no general nature. Therefore, if that petition is granted by amending Article 67 section (2) to read:
   "The tenure of ad hoc judges is for period of 5 (five) years and which can be extended each 5 (five) years by the Chief Justice of the Supreme Court up to reaching the limit of retirement age of a judge, namely 62 years for ad hoc judges being Civil Servants and 67 years for ad hoc judges at the Supreme Court of the Republic of Indonesia."
   That will amend entirely the meaning of special and temporary, which means that there is no difference with the judges in general, and that will not be in line with the Law Number 2 of 2004 regarding the intention of appointment of an *ad hoc* judge at a Court of Industrial Relations (PHI)."
5. Besides, based on Article 70, the appointment of *ad hoc* judges at the Courts of Industrial Relations (PHI) is conducted by paying regard to the need and the source of the available personnel, so that the appointment of *ad hoc* judges is truly based only on the need and availability of the human resources needed by the judiciary bodies, which means, if by the time the need and the human resource have been fulfilled, the presence of *ad hoc* judges may well no longer be needed.
6. Whereas the Supreme Court perceives the presence of *ad hoc* judges at the Courts of Industrial Relations (PHI) as follows.
   a. As a matter of principle, the Supreme Court requires the presence of *ad hoc* judges at the Courts of Industrial Relations (PHI) in accordance with the need.
   b. Normatively the Supreme Court refers to the applicable laws and regulations related to the *ad hoc* judges at the Courts of Industrial Relations (PHI).

   Based on the testimony herein-above, the Supreme Court opines as follows.
   1. The appointment and dismissal of *ad hoc* judges at the Courts of Industrial Relations (PHI) are conducted based on the applicable laws and regulations.
   2. The amendment regarding the revocation or declaration of the non-applicability of Article 67 section (2) of the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial

Relations (Supplement to the Gazette of the Republic of Indonesia Number 4356) against the Constitution of the Republic of Indonesia of 1945, would lead to a far-reaching effect related to the presence of *ad hoc* judges in the other fields, burden on the state budget, and the professionalism of judges.

3. In practice, there is an obstacle which is caused by the long duration of the re-selection process for *ad hoc* judges at the Courts of Industrial Relations (PHI), so that a simplification is needed by making priorities in the selection process for the next period for *ad hoc* judges at the Courts of Industrial Relations (PHI) having good track record in order to retain their office.

[2.9] Considering whereas the Related Parties and Apindo submitted their testimony in writing against the petition of the Petitioner at the trial of the Court on the date 27 September 2016 and which was received by the Office of the Clerk of the Court on the date 17 October 2016 which are essentially as follow:

Apindo is deeply against the petition for judicial review for the material review against Article 67 section (2) of the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations against the Constitution of the Republic of Indonesia of 1945, based on the following considerations:

The Tripartite Spirit in the Settlement of Disputes of Industrial Relations

- As it is known, prior to the enactment of the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations, the settlement of disputes in the field of manpower were settled based on the Law Number 22 of 1957 and the Law Number 14 of 1964, by means of institutions known as the P4D for the province level and the P4P for the central level. The P4D as well as the P4P consist of the Tripartite elements, namely the Government, the Entrepreneurs (Apindo), and the Union of Workers/Union of Laborers.
- Such is also in the Law Number 2 of 2004, whereby I myself had been one of the members of the Formulation Team, the spirit of this Law is similar to that existing in the P4D and the P4P, namely the Tripartite body. Article 63 section (2) of the Law Number 2 of 2004 regulates that *ad hoc* judges at the Tribunal of Judges at the first level as well as at the level of cassation were proposed by the organizations, namely the element of workers/element of laborers were proposed by the Union of Workers/the Union of Laborers, while the organization of entrepreneurs proposed the element of entrepreneurs, in this case Apindo. As such it is obvious that the stakeholders (the Union of Workers/Union of Laborers and Apindo) are parties who had constitutional rights to propose and/or to place their representatives as *ad hoc* judges at the Court of Industrial Relations.

Regarding the Importance of Periodization

- The periodization of the tenure of the *ad hoc* judges at the Courts of Industrial Relations is important, because it is part of the process of regeneration and caderization which is always monitored by Apindo, to assure that the *ad hoc* judges being the element of Apindo are professional, trustworthy, and have the integrity to represent the business realm. Therefore, if the tenure of the first period expires, its extension for one (1) more period shall be understood to require the recommendation from Apindo. Following the expiry of the tenure of the second period, then there is no more extension. It is proper that a re-nomination to become an *ad hoc* judge (at the first as well as at the cassation level) should be subject to a repeated selection.

The Experience of Apindo in the Extension of the Period of Tenure of *Ad hoc* Judges

- Close to the expiry of the tenure of the first period of *ad hoc* judges at the first level as well as at the level of cassation, the Supreme Court has extended the tenure for the second period without the recommendation from Apindo (perhaps also without the recommendation from the Union of Workers/Union of Laborers?) while from the monitoring and review of the performance of those *ad hoc* judges, Apindo did not want to extend the tenure of some of them. Apindo sensed that its constitutional rights have been violated.

The Process of Proposing Apindo's Candidates of *Ad hoc* Judges

- The recruitment of *ad hoc* judges is conducted by the Leadership Council of Regencies or Municipalities (DPK) of Apindo by proposing candidate *ad hoc* judges to the Leadership Council at the Province level (DPP) of Apindo.

- DPP Apindo would perform competence review in writing and administrative selection against the candidates proposed by the DPK. Those declared to have passed the selection by the DPP Apindo would be proceeded to the National Leadership Council (DPN) Apindo.
- The DPN Apindo decided through the existing mechanism to determine candidate *ad hoc* judges to be proposed to the Ministry of Manpower to undergo a process as determined in the Law Number 2 of 2004.

[2.10] Considering whereas the Court has received the conclusion of the Petitioner, the President, and the Related Parties (the Defense Team of the Workers/Laborers for the Movement of National Welfare (*Buruh Untuk Gerakan Kesejahteraan Nasional*) and the Federation of Indonesian Tourism and Sectoral Labor Unions), as received by the Office of the Clerk of the Court respectively on the date 16 October 2016, 17 October 2016, and 18 October 2016, which in essence confirm the retained stance of the parties;

[2.11] Considering whereas to brief the description of this ruling, all matters occurring at the trial are referred to the minutes of the trial, being one unity which is inseparable from this judgment;

3. LEGAL CONSIDERATION

The Authority of the Court

[3.1] Considering whereas based on Article 24C section (1) of the Constitution of the Republic of Indonesia of 1945 (hereinafter referred to as the Constitution of 1945), Article 10 section (1) letter a of the Law Number 24 of 2003 regarding the Constitutional Court as has been amended by the Law Number 8 of 2011 regarding the Amendment to the Law Number 24 of 2003 regarding the Constitutional Court (Gazette of the Republic of Indonesia of 2011 Number 70, Supplement to the Gazette of the Republic of Indonesia Number 5226, hereinafter referred to as the Law regarding the Constitutional Court), and Article 29 section (1) letter a of the Law Number 48 of 2009 regarding Judicial Powers (Gazette of the Republic of Indonesia of 2009 Number 157, Supplement to the Gazette of the Republic of Indonesia Number 5076, hereinafter referred to as the Law 48/2009), one of the authorities of the Constitutional Court is to adjudicate at the first and final level, which ruling is final to review a Law against the Constitution;

[3.2] Considering whereas the petition of the Petitioner is to review the constitutionality of the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations (Gazette of the Republic of Indonesia of 2004 Number 6, Supplement to the Gazette of the Republic of Indonesia Number 4356, hereinafter referred to as the Law 2/2004) against the Constitution of 1945, which is one of the authorities of the Court, so that the Court is authorized to adjudicate on the petition as such (*a quo*);

Legal Standing of the Petitioner

[3.3] Considering whereas based on Article 51 section (1) of the Law regarding the Constitutional Court along with its Elucidation, those who can file a petition to review a Law against the Constitution of 1945 are those who assume that his/her constitutional rights and authorities granted by the Constitution of 1945 have been harmed by the enactment of a Law, namely:

a. an Indonesian individual citizen (including groups of people sharing similar interests);
a. unities of the adat law societies to the extent that they are still alive and are in accordance with the development of the public and the principle of the Unitary State of the Republic of Indonesia as is regulated by the Laws;
b. public or private legal entities; or
c. state institutions.

As such, the Petitioner in the review of a Law against the Constitution of 1945 shall first explain:

a. his standing as Petitioner as is mentioned in Article 51 section (1) of the Law regarding the Constitutional Court;
b. whether there is or there is no loss of constitutional rights and/or authorities granted by the Constitution of 1945 caused by the enactment of the Law petitioned for review;

[3.4] Considering whereas the Court as of the Ruling of the Constitutional Court Number 006/PUU-III/2005, dated 31 May 2005 and the Ruling of the Constitutional Court Number 11/PUU-V/2007, dated 20 September 2007, as well as the subsequent Rulings, opines that the loss of the

constitutional rights and/or authorities as mentioned in Article 51 section (1) of the Law regarding the Constitutional Court shall fulfill five conditions, namely:

a. the existence of the constitutional rights and/or authorities of the Petitioner granted by the Constitution of 1945;
b. the Petitioner assumes those constitutional rights and/or authorities to have been harmed by the enactment of a Law petitioned for review;
c the mentioned loss of the constitutional rights and/or authorities of the Petitioner has a specific nature and is actual, or at least bears the potential which according to normal reasoning can be ascertained that it will happen;
d. there is causal relation *(*Dutch: *causal verband)* between a loss mentioned and the enactment of a Law petitioned for review;
e. the existence of the possibility that by the granting of petition the constitutional loss like postulated will not happen or will not happen again;

[3.5] Considering whereas the Petitioner has postulated that being a private person Indonesian citizen, he feels to have been harmed in his constitutional rights by the enactment of Article 67 section (2) of the Law 2/2004, with the reasons in essence as follow:

1. Whereas *ad hoc* judges, particularly the permanent member judges at the Courts of Industrial Relations are people who have the capability and typical and specific experience in the handling of dispute cases of industrial relations. The education and experience have empowered *ad hoc* judges, particularly permanent member judges at the Courts of Industrial Relations to live up to disputes of industrial relations in Indonesia and it can be ascertained that *ad hoc* judges, particularly permanent member judges at the Courts of Industrial Relations have the experience to examine and to rule on disputes of industrial relations submitted to the court of industrial relations. Besides, the office of *ad hoc* judges, particularly the permanent member judges at the Courts of Industrial Relations is an office which is appointed, because his/her competence as judge as also career judges, whereby to hold the office as *ad hoc* judges, particularly the permanent member judges at the Courts of Industrial Relations, they also undergo selection and education of judges like the career judges in general. Therefore, Article 67 section (2) of the Law 2/2004 is contrary to the principle of equality before the law and government and violates the right of work and decent living based on Article 27 section (1) and section (2) of the Constitution of 1945. The provision of Article 67 section (2) of the Law 2/2004 is very discriminative and is contrary to the principle of independent Judicial Powers of the judges.
2. Whereas the application of Article 67 section (2) of the Law 2/2004 is obviously a discriminative act, whereby there is limited treatment against *ad hoc* judges at the Courts of Industrial Relations if compared to the career judges in general.
3. Whereas the provision of Article 67 section (2) of the Law 2/2004 regarding the limitation of periodization of the period of employment and the period retirement of *ad hoc* judges at the Courts of Industrial Relations is a form of violation against the principle of equitable legal certainty and equal treatment before the law (equality before the law) for *ad hoc* judges, particularly the permanent member judges at the Courts of Industrial Relations as enforcer of Judicial Powers, whereby the judge bears the function as the main pillars of enforcement of law who shall also be assured of his/her equality in law and his/her independence in law.
4. Whereas the violation against the principle of equitable legal certainty and equal treatment before the law (equality before the law) has turned *ad hoc* judges, particularly the permanent member judges at the Courts of Industrial Relations into uncertainty and inequality in performing their tenure and their period of retirement.
5. Based on the various legal and constitutional arguments which the Petitioner has offered in the description herein-above, the Petitioner has concluded that the norm of Article 67 section (2) of the Law 2/2004 is contrary to the provision of Article 24 section (1), Article 27 section (1) and section (2), and Article 28D section (1) of the Constitution of 1945, therefore, there is sufficient reason for the Constitutional Court to declare the article as such (*a quo*) contrary to the Constitution of 1945 and to have no legal binding force.

[3.6] Considering that based on Article 51 section (1) of the Law regarding the Constitutional Court and the Ruling of the Court regarding the legal standing as well as the related loss suffered by the Petitioner, according to the Court:

a. the Petitioner has constitutional rights granted by the Constitution of 1945, particularly Article 24 section (1), Article 27 section (1) and section (2), and Article 28D section (1), as well as the Petitioner assumes that those constitutional rights have been harmed by the enactment of the Law petitioned for review;
b. The constitutional loss of the Petitioner, which at least can be ascertained according to normal reasoning that it bears the potential to happen;
c. There is causal relation *(*Dutch: *causal verband)* between the loss as mentioned and the enactment of the Law petitioned for review, as well as that there is the possibility that by the granting of the petition, the constitutional loss as postulated will not happen or will not happen again;

Based on those considerations, according to the Court, the Petitioner has legal standing to submit the petition as such (*a quo*);

[3.7] Considering that the Court is authorized to adjudicate on the petition as such (*a quo*) and the Petitioner has legal standing to submit the petition as such (*a quo*), furthermore the Court shall consider the subject matter of the petition;

The Subject Matter of the Petition

[3.8] Considering whereas the subject matter of the petition of the Petitioner is to review the constitutionality of Article 67 section (2) of the Law 2/2004 stating that:

Article 67 section (2) of the Law 2/2004:

> "*The tenure of ad hoc Judges is for a period of 5 (five) years and which can be extended for 1 (one) more tenure,"*

is contrary to Article 24 section (1), Article 27 section (1) and (2), and Article 28D section (1) of the Constitution of 1945;

According to the Petitioner, the enactment of the provision of Article 67 section (2) of the Law 2/2004 regarding the limitation of periodization of the period of employment and the period of retirement of *ad hoc* judges at the Courts of Industrial Relations is a form of violation against the principle of equitable legal certainty and equal treatment before the law (equality before the law) as well as is contrary to the principle of equality before the law and government as well as violates the right of work and decent living based on the provision of Article 27 section (1) and section (2) of the Constitution of 1945. Besides, the provision of Article 67 section (2) of the Law 2/2004 is very discriminative and is contrary to the principle of independent Judicial Powers for the judge as enforcer of Judicial Powers.

[3.9] Considering whereas against that postulate of the Petitioner, the Court furthermore considers as follows:

[3.9.1] Whereas development related to industrial relations reflects the existence of changes having fundamental nature in labor affairs with regard to employment and the workers *per se* in the public, in terms of economy as well as social. The activities of industrial relations may comprise a collection of phenomena, out of as well as in the work place related to the stipulation and regulation of relations of manpower. The regulation that manpower relations is one of the forms of freedom of citizens to determine employment has been assured by Article 28D section (2) of the Constitution of 1945 stating that, "Each person shall be entitled to recognition, guaranty, protection, and equitable legal certainty as well as equal treatment before the law". Industrial Relations, which links the interest of the workers or laborers with the entrepreneur, bear the potential to raise differences in opinion, even dispute between both parties. Disputes in the field of industrial relations which is known to date, may occur regarding the rights which has been stipulated or regarding manpower conditions which have yet to be stipulated either in employment agreements, company regulations, joint employment agreements as well as in laws and regulations.

The provision of Article 1 section (1) of the Law 2/2004 states that*:* "Disputes of Industrial Relations is difference in opinion which causes contention between entrepreneurs or a compound of entrepreneurs with workers/laborers or workers unions/labor unions, because of disputes regarding rights, disputes regarding interest, disputes regarding Severance of Employment Relationship and disputes among workers unions/labor unions in one company". As has been affirmed in that Law 2/2004 those disputes of industrial relations may also be caused by severance of employment relations. In case that one of the parties is no longer interested to be bound in an employment relationship, then it will be difficult for the parties to retain harmonious relations. Therefore, the best way out must be found for both parties to

determine their form of settlement, so that the Court of Industrial Relations as regulated by the Law 2/2004 is expected to settle cases of severance of employment relations. Let alone in an era of transparency and democratization in the industrial world as manifested by the existence of the freedom to associate for workers or laborers, then the sum of workers union or labor unions in companies cannot be limited. The competition among workers union or labor unions in companies may lead to disputes among workers union or labor unions which in general are related to the problem of membership or representation in the negotiation to make joint employment agreements, whereby that problem and the dispute settlement shall be settled through an institution for the settlement of disputes of industrial relations.

[3.9.2] Whereas the institution of the settlement of disputes of industrial relations has the duty and authority among others, to receive, to examine, and to rule on each dispute between workers and entrepreneurs, comprising disputes regarding rights; disputes regarding interest; regarding severance of employment relations; and disputes among workers union in a company. To date those matters are handled by a Regional Committee for the Settlement of Labor Disputes and the Central Committee for the Settlement of Labor Disputes. Therefore, the spirit of the establishment of the Court of Industrial Relations is an inseparable part from the modern public opinion which perceives that the mechanism of dispute settlement of labor affairs takes too much time and tend to be bureaucratic as well as is deemed to have not reflected the principle of a simple, quick and inexpensive judiciary as regulated by Article 4 section (2) of the Law Number 4 of 2004 regarding Judicial Powers as has been replaced by the virtue of the Law Number 48 of 2009 regarding Judicial Powers. The process of settlement of disputes of industrial relations to date has been done through a bipartite stage between the workers and the entrepreneurs, the tripartite stage has been commenced with the mediation at the office of the Ministry of Manpower up to the Regional Committee for the Settlement of Labor Disputes and the Central Committee for the Settlement of Labor Disputes.

[3.9.3] Whereas the settlement of disputes of industrial relations is conducted through several stages, namely the first stage at the institution for bipartite cooperation**,** secondly through mediation**,** thirdly the parties may make their choice either direct to the Court of Industrial Relations or to proceed to the stage of conciliation or arbitration, which depends very much on the nature of the dispute**.** In accordance with the Law 2/2004, other than the bipartite institution, mediation, conciliation, and arbitration, one of those which also regulates the establishment of the Court of Industrial Relations has been firmly described herein-above in the consideration regarding the reason of urgency of the Court of Industrial Relations. In essence, the nature of disputes of industrial relations according to the Law 2/2004 is the difference of opinion which causes contention between the entrepreneurs (a compound of entrepreneurs) with the workers or laborers (union of workers or union of laborers), because the existence of disputes regarding rights, disputes regarding interest, disputes regarding severance of employment relations, and disputes among union of workers or labor unions in a company. Based on the Law 2/2004, the settlement of cases of labor affairs or cases of disputes of industrial relations may be settled through the process at the Court of Industrial Relations, if the settlement through the consultation lane like bipartite or tripartite settlement, mediation, conciliation, and arbitration fails to achieve agreement. The settlement of cases of dispute of industrial relations at the Court of Industrial Relations is conducted by *ad hoc* judges and career judges at the Court of Industrial Relations being one form of the execution of Judicial Powers.

[3.9.4] The presence of *ad hoc* judges in Indonesia cannot be separated from the system of the judiciary in Indonesia, whereby *ad hoc* judges are institutionalized to strengthen the role and function of the Judicial Powers in upholding law and justice, whose presence in the judiciary have a special nature, like for instance the Court of Criminal Act of Corruption, the Court of Commerce, the Court of Industrial Relations, and the Court of Fishery. *Ad hoc* judges are judges appointed from non-career judges complying with the preconditions that they have the expertise and experience, professionalism, dedication, and high integrity, living up to the aspiration of a state based on law and the welfare state based on justice, as well as understanding and respecting human rights and the other preconditions determined by the laws and regulations. That has also been affirmed by the Court in the Ruling Number 32/PUU-XII/2014, dated 20 April 2015, stating that "*...Besides, the initial objective of the institutionalization of ad hoc judges is to strengthen the role and function of the Judicial Powers in upholding law and justice, which is in line with the complexity of the existing cases. Ad hoc judges are non-career judges who have the expertise and capability to adjudicate special cases, so that ad hoc*

judges may render positive effect when ad hoc judges join career judges in the handling of a case." (paragraph [3.18]). The Law 2/2004 has particularly regulated the procedure of appointment, duty, and the authority to examine cases of industrial relations of the *ad hoc* judges in Industrial Relations.

[3.9.5] Whereas in his petition as such (*a quo*) the Petitioner pleads Article 67 section (2) of the Law 2/2004 to be understood as constitutionally conditional to read "the tenure of *ad hoc* judges is for a period of time of 5 (five) years and which can be extended each 5 (five) years by the Chief Justice of the Supreme Court up to reaching the limit of retirement age of judges namely 62 years for *ad hoc* judges at the District Court and 67 years for *ad hoc* judges at the Supreme Court of the Republic of Indonesia ".

Whereas according to the Court, the position of *ad hoc* judges at the Courts of Industrial Relations and as *ad hoc* judges at the other special courts are as member judges in the composition of a Tribunal of Judges having the duty to examine and to rule on cases of labor affairs or cases of industrial relations. The procedure of the appointment of *ad hoc* judges at the Courts of Industrial Relations is conducted at the proposal of the organization of union of workers or labor unions and the organization of entrepreneurs, whereby the concerned person shall master legal knowledge, particularly in the field of labor affairs or manpower as well as having the experience in the handling of problems related to manpower and in the field of entrepreneurship. The composition of a tribunal of judges examining a case of industrial relations always consists of a career judge as the Chief Judge of the Tribunal and 2 (two) *ad hoc* judges as member judges who are respectively one *ad hoc* judge being a member from the element of the workers unions/or labor unions and one *ad hoc* judge being a member from the element of the organization of entrepreneurs. This is very different from the composition of a tribunal of judges at the other special courts having *ad hoc* judges, that is because of the particularity of the Court of Industrial Relations which cannot be separated from the existence of the need that the Court of Industrial Relations is an implementation of the development of the tripartite institution in dispute settlement of industrial relations.

Whereas due to the attachment of the Court of Industrial Relations being the representation of the proposing elements, this case cannot be released from the presence of *ad hoc* judges at the Court of Industrial Relations, who in the process of their recruitment would leave behind the involvement of those respective proposing institutions, so that although the tenure of *ad hoc* judges at the Courts of Industrial Relations has expired, their re-assignment is subject to the approval or recommendation from the proposing institutions, bearing in mind that, that institution is deemed to know best regarding the candidate *ad hoc* judges to sit at the Court of Industrial Relations, either from the perspective of capability, integrity and track record as well as assumed to understand the spiritual atmosphere of the manpower problems and the field of entrepreneurship, which would then be proposed to the Minister of Manpower affairs and the further process according to the provision of the applicable laws and regulations up to their proposal by the Chief Justice of the Supreme Court for appointment by the President.

Ad hoc judges at the Courts of Industrial Relations are needed in order to obtain balance and also because their capability in examining and to rule on complex cases so as involving manpower as well as the field of entrepreneurship. That is in line with the Ruling of the Court Number 56/PUU-X/2012, dated 15 January 2013, stating that, *"…, so that ad hoc judges are needed only to adjudicate on certain cases. Therefore, ad hoc judges should only have the status of a judge during the handling of the case which he/she examines and adjudicates on."* Subsequently the Ruling of the Constitutional Court Number 32/PUU-XII/2014, dated 20 April 2015, confirms that: "*....whereas the institutionalization of ad hoc judge is basically due to the factor of the need of expertise and effectiveness of examinations of cases at the Court having a special nature.... The appointment of ad hoc judges is conducted through a series of selection processes which are not similar like the process of recruitment and appointment of judges as state officials in general." (paragraph [3.18]).* Therefore, according to the Court the re-nomination of *ad hoc* judges at the Courts of Industrial Relations whose tenure has expired either at the first level as well as at the level of appeal does not deviate from the spirit of the Ruling of that Court, the more against *ad hoc* judges at the Courts of Industrial Relations who carry out their duty for two periods and have the competence, capacity, professionalism which are deemed to be adequate to fulfill the conditions for re-nomination as *ad hoc* judges at the Courts of Industrial Relations.

Nevertheless, the Court confirms with regard to that important matter that the re-nomination of candidate *ad hoc* judges at the Courts of Industrial Relations who have held such office shall not eliminate the opportunity of the other candidate *ad hoc* judges who also fulfill the preconditions as

determined by the laws, and who are also proposed by the proposing institutions of the workers unions/labor unions and the organization of entrepreneurs to undergo the selection for nomination as candidate *ad hoc* judges at the Courts of Industrial Relations. In other words, between the candidate *ad hoc* judges who have served as well as those who have not yet served, there shall be equal right and opportunity to nominate him/herself and having been proposed by proposing institutions of either the workers unions/labor unions and the organization of entrepreneurs to the extent that they fulfill the conditions of the laws up to the final process as proposed by the Chief Justice of the Supreme Court for appointment by the President.

Whereas by the described considerations mentioned herein-above, the Court can understand that the petition of the Petitioner related to the norm of Article 67 section (2) of the Law 2/2004 to declare it unconstitutional to the extent it is not understood as rendering an additional opportunity to the *ad hoc* judges who have served and therefore the Court shall declare the norm of Article 67 section (2) of the Law 2/2004 is conditionally constitutional, as contained in the verdict of this ruling below.

[3.10] Considering whereas based on the entire consideration mentioned herein-above, according to the Court, the petition of the Petitioner is reasoned according to the law for a part.

4. CONCLUSION

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

[4.1] the Court is authorized to adjudicate on the petition of the Petitioner;

[4.2] the Petitioner has legal standing to submit his petition as such (*a quo*);

[4.3] the Petition of the Petitioner is reasoned according to the law for a part.

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

5. VERDICT OF THE JUDGMENT

To Adjudicate,

1. To grant the petition of the Petitioner for a part;
2. To declare that Article 67 section (2) of the Law Number 2 of 2004 regarding the Settlement of Disputes of Industrial Relations (Gazette of the Republic of Indonesia of 2004 Number 6, Supplement to the Gazette of the Republic of Indonesia Number 4356) is contrary to the Constitution of the Republic of Indonesia of 1945 and has no legal binding force conditionally to the extent that it is not understood as: "*The tenure of ad hoc judges are for a period of time of 5 (five) years and which can be extended each 5 (five) years as proposed by the Chief Justice of the Supreme Court subject to the prior approval from the proposing institution which process shall be according to the applicable Laws.*"
3. To order the loading of this ruling in the Official Gazette of the State of the Republic of Indonesia;
4. To dismiss the petition of the Petitioner for the other and the remaining.

Such is ruled in the Consultation Meeting of Justices by nine Constitutional Justices namely Arief Hidayat, being the Chief Justice and concurrently a Member, Anwar Usman, Manahan M.P Sitompul, Patrialis Akbar, Suhartoyo, Maria Farida Indrati, Wahiduddin Adams, Aswanto, and I Dewa Gede Palguna, respectively as Members, on **Tuesday,** dated **the seventeenth,** the month of **January,** the year **two thousand seventeen**, and on **Monday,** dated **the thirteenth,** the month of **February,** the year **two thousand seventeen**, pronounced in a Plenary Session of the Constitutional Court open for the public on **Tuesday,** dated **the twenty first,** the month of **February,** the year **two thousand seventeen,** completely pronounced at **14.25 hours West Indonesian Time**, by eight Constitutional Justices, namely Arief Hidayat, being the Chief Justice and concurrently a Member, Anwar Usman, Manahan M.P Sitompul, Suhartoyo, Maria Farida Indrati, Wahiduddin Adams, Aswanto, and I Dewa Gede Palguna, respectively as Members, in the presence of Achmad Edi Subiyanto being the Substitute Clerk, in the presence of the Petitioner/his attorney, the President or his representative, and the Related Parties/their attorneys, without the presence of the Parliament or its attorneys.

CHIEF JUSTICE,

signed

Arief Hidayat

MEMBER JUSTICES,

signed	**signed**
Anwar Usman	**Manahan M.P Sitompul**
signed	**signed**
Suhartoyo	**Maria Farida Indrati**
signed	**signed**
Wahiduddin Adams	**Aswanto**

signed

I Dewa Gede Palguna

SUBSTITUTE REGISTRAR,

signed

Achmad Edi Subiyanto