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RESEARCH ARTICLE

RECONSTRUCTION OF THE LAWS AND REGULATIONS GOVERNING AUTHORITY OR POWER OF LEGISLATORS TO PREVENT OR ERADICATE CORRUPTION: (A *DIGNIFIED JUSTICE PERSPECTIVE*).

Wandi Subroto¹ Prof. Dr. Teguh Prasetyo SH., M. Si² and Dr. H. Jawade Hafidz S.H., M.H³.

1. Doctoral Student at the Faculty of Law Sultan Agung Islamic University, Semarang Central Java-Indonesia.
2. Faculty of Law Universitas Kristen Satya Wacana Salatiga Central Java-Indonesia; & President of the Republic of Indonesia's Appointee for the Republic of Indonesia's Court of Ethics for the General Election Organizers.
3. Faculty of Law Sultan Agung Islamic University, Semarang Central Java-Indonesia.

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Abstract

It has been a general knowledge in the saying that in Indonesia the national legislative body or the House of Representative which primarily formed by the law to become the body representing a sovereign in the democratic Indonesian state who has the legitimate power to make legislations and laws is sometimes has otherwise been considered as "a den of robbers". This situation has somehow proofed the truth of the well known maxim of Lord Acton which read that: "power tends to corrupt, absolute powers corrupt absolutely," is almost an unchallenged doctrine. In Indonesia, the general assumption in such a saying has primarily been corresponding to the facts that too many members of the legislative body (the Republic of Indonesia's House of Representative (DPR-RI)) have been convicted by the courts of justice as big-fish corruptors, and recently even the Speaker of the DPR-RI has been suspected as the one who has been involved with the mega-corruption scandal in the Electronic Card for the People's Single National Identification Project. People would have argued that one of the causes of this calamity has been the regulations which governing the authoritative power of the members of the legislative branch of government. Some has argued that there has been too little rules to prevent the members of the House in having their involvements with stealing the public money from public purses. This Article examines the possibilities offered in and by the law, using the Dignified Justice Perspective (theory) in reconstructing laws and regulations governing the use of power by the members of the House in order to eradicate or perhaps preventing corruption by the legislative members as a whole in the Pancasila Legal System.

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Introduction:-

To begin with, it must firstly be stated here that the laws and regulations governing power or authority of each and every member of a legislative body (each individual legislator) in a sovereign legal system is generally subject to an existing system of legal principles and rules which are by an large no different in their treatment to the institutional

Corresponding Author:-Wandi Subroto.

Address:-Doctoral Student at the Faculty of Law Sultan Agung Islamic University, Semarang Central Java-Indonesia.

power or authority of the legislative body in which the individual legislators are the member. Within such laws and regulations stands a principle that all of the existing rules (to legally give protections) for a legislative body must be the same rules to measure or governing (to legally give protections) to each and every individual members of the legislative body as such.

In fact it is also seldom happened, however, that some are not prepare to agree that the implementation of laws and regulations governing power or authority of an institution, in this case the Indonesian legislative body, are similar to the implementation of the laws and regulations governing the power or authorities of the members (legislators) and that those laws and regulations could be used to measure simultaneously the performance of the institution and the behaviour of individuals in question is its members.

Generally the second type is mostly preferred, in which the right or authority (power) of each and every individual member of an institution, and in this case the member of a legislative body would only limited to the individual who undertook or performed the authority. It has been understood that in this second type of relationship, the quality of an action of each and every individual is having no connection with the performance of the institution in which the individual is a part of. In other words, the quality of an action of an individual is counted as different from the quality of the action or performance taken by the institution and that it should be judged separately in this second type of relationship. Furthermore it is considered reasonable if the value of protection or praise acquired by an individual member of an organization or an institution would not be used in order to measure or to judge the institutional performance or the organizational image in which that individual is working with as a whole.

Most likely in Indonesia generally people prefer to follow the first type of relationship as mentioned above. As it has been a general knowledge in Indonesia in which mainly people tend to follow the pattern of authoritarian society and will follow the judgement given to a particular person, particularly the leaders as their reference, and in this case an individual member of the legislative body, to measure the institutional performance or image of the institution in which the member is being part of it. This has been expressed in the phrase such as “one rotten apple spoils the whole barrel” (*nila setitik rusak susu sebelanga*).

Therefore one could argue that a bad action or a bad behaviour of one member or an individual member of the Indonesian Legislative Body, in this case the corruption done by an individual member of the Indonesian House of Representative Body (DPR-RI) could create a detrimental effect to the performance or image of the Legislative Institution as a whole. In this case, the whole (DPR-RI) institution in which the bad individual is the member is badly affected by the bad action of the individual member. Vice versa, a good name or reputation accredited to one member of the legislative institution could become a good reputation or good image enjoyed as well for the institution as a whole; in this case the institution in which the good legislator has becoming part of it.

In relation to what was stated above, another aspect that worth mention is that if the quality of a person's behaviour could be found its reflexion in the quality of the laws and regulations in a legal system (*jiwa bangsa/Volksgeist*), as one of the postulate of the Dignified Justice Theory, as a result, the quality of laws and regulations governing an institution could be used to measure the quality of the institution in question, and to include in it the quality of the members of that institution in question. Therefore, a breach of the standard quality (protection) or rules and regulations of that institution by one member of the institution could be seen as an institutional breach that spoils the quality standard which was stipulated as part of the image of the institution. Therefore it is a condition to keep a good reputation of an institution to set up rules and regulation and its mechanism to make sure that the behaviour or conduct of its member are in compliance with the institutional rules and regulations.

The aspects that has just been stated above are aspects that are essential to the Dignified Justice Theory. It has been stated everywhere that those essentials are features of the Dignified Justice perspective which tries to promote a balance in every thing, and in this case the balance of the interest of the public (institution) and the interest of each and every individuals¹. This idea is inspired by the Pancasila Legal System, particularly in its existing laws and

¹Teguh Prasetyo, *Teori Keadilan Bermartabat: Perspektif Teori Hukum*, Cetakan Pertama, Nusa Media, Bandung, 2015; Teguh Prasetyo, *Pancasila the Ultimate of All the Sources of Laws (A Dignified Justice Perspective)*, Journal of Law, Policy and Globalization, International Institute for Science, Technology and Education (IISTE), Vol. 54, October 2016; Teguh Prasetyo, *Criminal Liability of Doctor in Indonesia (From A Dignified Justice Perspective)*, International Journal of Advanced Research (IJAR), 1(10); Teguh Prasetyo S. H. MS.i and Tri Astuti

regulations to govern the dignity of the legislative body, as the Theory has relied on the systemic approach to legal order.

This approach demands that within the legislative body there should be a separate office which function among other things is primarily to make sure that standard of conduct of each and every individual member of the legislative body are systemic. In the Pancasila Legal System this office was named as Honorary Council (Dewan Kehormatan) for the legislators as part of the system according to the existing laws and regulations. The functions of the Honorary Council, among other things is to make sure that the behaviour of the legislators is institutional, and to guard the dignity and pride (*marwah*) of the institution (the House of Representative), preventing the occurrence of that which is being called “one rotten apple spoils the whole barrel” (*nila setitik rusak susu sebelanga*).

The reconstruction undertaking in the analysis below is made to find that laws and regulations which are governing the authoritative power of each and every member of the House of Representative are genuine laws and regulations which are existing and enforcing are institutionalized one. In other words, those laws and regulations are not simply serving the interest of individual members of the House, but they are also serving the House as an institution. One of the substance of the laws and regulations governing power or authority which in this case is focussed on the regulations governing the authority of the member of the House is the what so called regulations to prevent, decrease or even to eradicate the corruptive behaviour or criminal acts of corruption by the member of the Republic of Indonesia’s House of Representative.

Questions posed for the problem is how those rules of law are provided for to the authority of the member of the House not to get involve with corruption; and how the law enforcement is directed against the corruptive behaviour or criminal conduct of corruption done by the members of the House and how to reconstruct the laws and regulations governing power of the member of the House in order to agree with the idea of justice.

Mechanism to Prevent Corruption of the Indonesian House:-

A survey on the trend to value the performance of the House of Representative or the legislative body in Indonesia has resulted in the prove that value given to one member of the House of Representative is still being considered as difficult to be conted independently with the performance of the House as an institution as a whole.²

The survey has also informed that if the authority of the House of Representative as an institution is too powerful or too big, as a result automatically the authority of a member of the House is also similar to the size or quality of the authority of the House as an institution. At this juncture one must therefore acknowledge the genuiness of the axiom made by Acton: that power tends to corrupt, absolute power corrupt absolutely. The axiom was made in order to construct a system to prevent the abuse of power or authority either done by any member of the House, since simultaneously the abuse is similar to the abuse by the House as an institution. This adage could create justice based on the idea to prevent the criminal act of corruption in the legislative body’s environment which is focussed not only to the behaviour of each of the member of the House, but also the standard for justice for the House of the legislative body in the system as a whole.

Constitutionally, the concept of corruption used in this paper is to follow the broadest meaning of the concept used by Acton. In it, corruption was also meant a highest threat to the *national security* of the Republic of Indonesia. The formulator of the Republic of Indonesia’s Constitution was fully aware that corruption would threaten the purpose of the existence of the Republic of Indonesia. This is clearly stipulated in the Preamble of the Basic Act of the Republic of Indonesia. It has been formulated that the purpose of the State of Republic of Indonesia is to protect the whole of the nation of Indonesia and also all of the Indonesians birthplace; to promote public welfare, and also to enlighten the life of the Indonesian nation. One of the form of violation to the aim and purpose of the Nation State of Indonesia as stipulated in the Republic of Indonesia’s Basic Act as mentioned above is corruption, and if one could coin it philosophically, it would be the same as a constitutional crime in Indonesia.

Handayani., *Legal Aid Principle: (Dignified Justice Theory Perspective)*, International Journal of Advanced Research (IJAR), 1(10); Shallman, Teguh Prasetyo and Amin Purnawan, *Public Service on Land Registration Based on the Dignified Justice*, Journal of Advanced Research (IJAR), Int. J. Adv. Res.5(5), 154-163.

²*Harian* (Daily) Kompas, Monday, 5th of September 2011.

To put it frankly, corruption is a crime intrinsic in the authority hold by the administrators of the Indonesian State, and among other of the authorities is the members of the House of Representative of the Republic of Indonesia. Following the traditional Indonesian perspective as mentioned above, it could be fairly argued here that if a corruption is perpetrated by one member of the House, as a result it could become corruption perpetrated by the whole House as an institution.

Some has said that in Indonesia, power or authority granted to the House of Representative in Indonesia is considered to be almost unlimited. This conclusion has been drawn from the stipulation of the Article 71 of the Republic of Indonesia Act Number 17 of 2014 on The People's General Assembly, the House of Representative, the Senate and the Regional House of Representative (UU-MD3). It is stated in the Act that, the House has the authority to form any legislation which are deliberated together with the President to reach a consensus in idem; it is also have the authority to give approval or abstain from approval on the Government Regulation in Place of an Act (Perppu) proposed by the President to become an Act and the authority to deliberate an Act Draft proposed by the President or by the House itself.

The very broad power or authority of the Indonesian legislative body as stated above, can trigger the cause of the abuse of authority or power, particularly corruption. This aspect is also in line with the adage stated by Acton as mentioned above, that power tends to corrupt, absolute power corrupt absolutely. The adage stated by Acton has indicated that in the Indonesian Legislative Body there are big potentialities for power or authorities to be misused and it very depend on how big the authority and power is. If the power is big, the potentiality to be corrupted is also big. And this is also true for the power held by the House of Representative.

Almost similar power has also been held by the members and also the regional house of representatives. In the Act of MD3, the authority or power of the member of the regional houses and in this case to mean also the authority of the regional house of representatives is stated as follows. The Regional (Province and Kabupaten/Kota) is together with the Head of the Regions i.e. the Governors, the Head of the Districts (Kabupaten) or Mayors (Cities); are to deliberate and to give approval to the draft of regional legislations on the budget proposed by the head of the region; to undertake a supervisions on the implementation of the regional legislations and the budget of the regions; to propose an appointment and termination of tenancy of the head of the regions to the Ministry of Home Affairs via the Governors to have the legalization of the appointment and/or the termination; to choose head of the District/Mayor in the case of vacation of the office.

Appart from all of the power as stated above, the member of the regional house of representatives whether it is in the Districts or the Cities are also having the authorities to give opinions and considerations to the head of the districts or cities on matters related to the plan to have an international agreement in the regional area; to give approval to the international cooperation plan to be undertaken with the regional governments either it is a district or a city; to ask for report on the accountability of the implementation of programs taken by the head of the regions either it is the head of the district or the city; to give approval to the plan for cooperation with other regional governments or with the third parties; and to seek every efforts to make sure that all the obligations of the regions are implemented according to the laws and regulations.

There has been a general believe so far that, every existing power or authority in Indonesia will create a potentiality to be abused, and even with a very sinical tone it has been argued by many in Indonesia that authority or power could be used as a medium for getting a big income for legislators in the Indonesian archipelagos. As mentioned above, the Indonesian Constitution or the Pancasila Legal System has already aware of this evil potentiality, and therefore the legal system has done every efforts to take control of the evil potentials as such, particularly in the financial sectors. One of the latest efforts in the legal system has been the promulgation of the Act Number 31 of 1999 on the Eradication of the Criminal Act of Corruption. This Act has been enforced ever since and to include in its targets have been the members of the National House of Representative and also the Regional House of Representatives. This Acts has been backed by a very taft penal sanctions and among other things the capital punishment.

Research has been conducted in order to reconstruct the Act, and other laws and regulations in the Pancasila Legal System governing corruptions. The reconstructions has been done using the justice virtues recognised in the Pancasila Legal System. The reconstruction projects is aim at finding or discovering the reasons of the formation of

a legal system of eradicating corruptions, particularly corruptions done by the legislators or members of the House of Representatives, as they are the makers of the anticorruption laws and legislations.

It has been a general believe that the reason that underlining the formation of the anticorruption legal rezim, including the criminal justice system to preven corruption has been, among other things, is to use the criminal law to forbid certain criminal behaviour or conducts, and one of the behaviour or conduct is corruption, and to include in the meaning of corruption is the abuse of power or authority. The anticorruption rezim is also formed in order to direct the states bodies, and including in them is the legislative body to a clean government. IT has been directed as well to the integrity of the bodies which has been instituted to run the legal system according to the principle of due process of law ect.

In the perspective of the Dignified Justice Theory, the existence of the Act on Anticorruption as mentioned above has been dictated by the higher principle, i.e the Pancasila, as stated in the Basic Act of the Republic of Indonesia 1945. In the Basic Act, or meny has called it the Indonesia's written Constitution one may found several rules governing the authority in order to be a clean. In order for the legislators to conctuct a clean authority the laws has stated several aspect of power limitation. In the Chapter VII regarding the House of Repesantative, beginning from Article 19 it has been stipulated matters related to the specific authority held by the legislative body. Article 19 section (1) of the Republic of Indonesia Basic Act it is stated that the hierarchy of the House is subject to the anected in an Act. And in the section (2) it has been stipulated that the House of Representative will have at least one meeting in one year.

As to the power related to the making of an Act, or the power to legislate, it has been stated in the Article 20. In the section (1) of the Article, it is stated that each of the Acts must be subjected to the aproval of the House of Representative. Apart from it, in the section (2) of the Article, it is stated that if a draft of an Act has not been given approval by the House, the Draft as such must not be resubmitted in the period of the deliberation at the time. What was mentioned above are aspects related to the laws and regulations governing the House as an institution. In fact, however, as elaborated above, in the Indonesian system the laws governing an institution can not be set apart from the laws and regulation governing individuals in the institutio. Therefore one could argue that the Legislative Authority as mentioned in the regulations bove could also be seen as the laws and regulations governing, or limiting the power of the individual member of the legislative bodies. This is in accordance with the rule stated in the Article 21 of the Republic of Indonesia Basic Act 1945 which read that members of the House of Representative have also rights to propose a draft Act. In the section (2) of the Article it was stated that even if the draft is approved by the House, but not legalised by the President, the draft must not be resubmitted to be deliberated at the same period of deliberation.

Preventing the Institutional Corruption of Legislative Body:-

At present, the old Act number 27 of 2009 on MD3, has been replaced by a new Act. There has been about 50% of its substance was replaced. The replacement is made to suit the new constitutional development. One of it was the Act number 12 of 2011 on the Formation of the Legislations. According to Teguh Prasetyo, this is a new development to create a new perspective according to the Pancasila Legal System, in which the legislators is subjected their power to a more limited and structured authorities as stated in the Act number 12 of 2011. This is also accordingly one aspect to prevent the legislators and simultaneously the House of Representative to slip into abuse of power or corruption in its broad sense.

Another reason that should be mentioned here is that the replacement of the old MD3 Act was to prevent corruption. This could be seen from the effort stated in the Act to accelerate the performance of the people representative institution in the system by implementing their tasks based on the principle of checks and balances, the principle of clean and respected as well as to increase the trust of the people on their functions as member of the institution of the law which representing the people, and will work to defend and uphold the rights of the people in Indonesia.

With regard to the eradication of corruption by the legislative body, the new MD3 Act has also been formed in order to strengthen and making it definitive the functions, authorities, and tasks of the House of Representative. As mentioned above, this legislation has been made to adjust with the Act Number 12 of 2011. One aspect of the new principle in the Act number 12 is the strengthening of the vehicle in the House to acquire as much as possible the aspiration of the biggest portion of the society when they are having plan to form a new legislation. Another aspect has been the demand for the House to make use of every opportunity to work together with the executive branch of

the Government, as this is one of the main character in the Pancasila Legal System according to the Dignified Justice Theory called work together (*gotong royong*).

One significant aspect of law in the control of the House not to abuse its power has been the attention on the budgetary rights of the House. It has been generally acknowledged that the budgetary right of the House is that it is having strategic value. Hamilton as quoted by Bagir Manan³ has mentioned that the branch of legislative is strong since it is holding the function related to the purses of the people. The legislative body is the holder of the power to control the using of the state money, since they who decide the faith of the state budget. The legislative body decide the allocation of the money, time, and also the target and they have power to refuse the budget proposed by the executive branch of the government. In the United States of America for example, the Congress has the power to refuse the budget submitted by the Government.⁴ It has been acknowledged that if the Congress refused the budget, it could result in the what so called government shutdown, and there is no possibility for a government to operate without a budget in their dispositions.

The budgetary power of the House could be the source of the abuse of power. In Indonesia this power has caused many of the member of the House to be trapped in the act of criminal, and in this case is corruption. This abuse has also caused by the fact that there has been too large of the authority of the House in this particular area. And this abuse has been regulated to prevent corruption in several articles, such as: Article 15 Section (5) of the Republic of Indonesia Act on the State Budgetary and also Article 107 section (1) letter(c), Article 156 letter (c) 2 letter (c), Article 157 section (1) letter (c), Article 159 section(5) the Act of MD3 stipulates that the involvement of the House in the deliberation of the National Plan for Income and Spending (RAPBN) is starts from organizational unit, function, programme, activities, and the type of spending.

Learn from experience, we have been told that the deliberation of the RAPBN is done according to the laws and regulation as such, however, the transparency has been felt as too difficult to be expected; and it has been a general knowledge that when it turn to the discussion on the RAPBN seldom it is taken place in the closed doors. A report by National Democratic Institute (NDI) for International Affairs 2005, stated that the most complained that has been directed to the member of the House was recorded 89%, that the respondents do not know the detail of the operational budget of the House.⁵ However some has suggested that the openness of the detailed budget of the RAPBN could be used by the member of the House to trade their influence (power and authority) for money given by the executive branch of the Government.

Bellow there will be described a real case of the member of the House of Representative which was caught as corruptor by a Court Decision in 2014. This description of the corruption case done by the member of the Republic of Indonesia's House of Representative could be understood as if having the fulfilment of the maxim by Acton: that *power tends to corrupt*.

Real Case of Corruption by an Indonesian Legislator:-

The case has proven that in fact legislator has been the factor, in which criminologist will called it criminogenic and this could be described by a case on corruption and money laundering in the Supreme Court of the Republic of Indonesia (MARI) Number 1195 K/Pid.Sus/2014, in this case a convicted is a member of the House in the period of 2009-2014.

³Lihat Bagir Manan, *Himpunan Tulisan Ilmiah Tentang Sistem Hukum Di Indonesia*, Dihimpun oleh Mahasiswa Program Doktor Ilmu Hukum Program Pascasarjana Universitas Padjadjaran Angkatan 2000/2001, Bandung, 2000, hlm., 2.

⁴Article 1 Paragraph 7 United States Constitution (US Constitution): "All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as another Bills."

⁵Lihat Riris Katharina dan Poltak Partogi Nainggolan, *Menciptakan DPR dan Sistem Pendukung Parlemen yang Mendukung Anggaran Pro-kaum Miskin*, dalam buku *Anggaran Pro Kaum Miskin, Sebuah Upaya Menyejahterakan Masyarakat* yang disusun oleh Yuna Farhan (ed), Jakarta: Pustaka LP3ES, 2009, hlm. 279.

The case begin from a moment when the Convicted criminal accepted a gift or promise in the form of the Indonesian Rupiah (IDR) 40 Trillion. According to the Judge, the Convicted has been declared as such since He must have been known, or have to get to suspect that the gift or promise was given to him in order to drive himself to undertake or doing something or omission in his capacity as the President of a Political Party to influence the Ministry of Agriculture⁶.

The doing of the Convicted was against his power, and in contradictory to his obligation as a member of the House of Representative of the Republic of Indonesia, as stipulated in the Article 5 number 4 of the Act number 28 of 1999 regarding the Clean and Free from Corruption, Colution and Nepotism of the Organizing of the State. The Court observed that as a member of the House of Reporesentative the Convicted has made legislation which is aim at the eradication of corruption in Indonesia.

Decidendi of the verdict has stated that the Convicted had also violated Article 208 section (3) of theMD3 Act, Article 281 section (3) The Decision of the DPR RI Number 01/DPRRI/I/2009-2010 dated 29 September 2009 on the Regulation for the Law and Order in the House of Representative of the Republic of Indonesia. The Convicted had also violated Article 2 section (2), Article 3 section (8) The Regulation of DPR RI Number 1 of 2011 on the Code of Ethics. All of these regulations are in their essence the law governing the authority based on justice for the member of the legislative body not to to the criminal act of corruption or abuse their power or authority.

The Convicted placed and transferred amount of money which he knew or must had suspected himself is the result of criminal act into several Bankd Accounts of himself and also the third party. The Convicted also paid and spent an amount for bought vehicles and properties such as: one unit of car Nissan Frontier Nopol B 9051 QI, one plot of land and a house on it in Cipanas West Java as well as five plots of land in Leuwiliang Bogor West Java which he knew or ought to have suspected that his conduct is a criminal act.

The Convicted did the criminal act on his behalf or any third parties, with the intention to hid or camouflaged the origin of the property which he knew of ought to have suspected as the result of criminal acts. IT must be mentioned here that the whole of the property of the Convicted was not reported in the State Document of Registration of the Property or Wealth of a State Aparatur made and dated on the 29th of December 2003 and its amendmends on the 1st of November 2009. The purpose of such an act was to hid or camouflaged the origin of the wealth since it was noted as not correspond to the income of the Convicted as a member of the legislative body (legislator) of the Republic of Indonesia in the period of disembunyikan 2004-2009 so that the Convicted knew and ought to have suspected that the wealth is the result of a criminal act, in this case corruption which is done by the Convicted.

Conclusion:-

As it is clear from the reconstruction of the laws and regulations for the legislators to prevent or eradicate corruption, in the notion of stealing money from the public purse, or abuse of power or authority which governing the members of the House of Representative or the Legislative Body in the Indonesian legal system as mentioned above; the result was that the laws and regulations are still containing the possibilities for the legislators to abuse their power or authority in the Indonesian system. Although in fact those laws and regulation have been primarily made with a noble aim to prevent or even to eradicate corruption in Indonesia, particularly corruption done by the members of the Legislative Body. From the criminological point of view, the big power or authority given to the members of the House of Reprsentative could be the criminogen factor, or the factor which has caused the happening of the violations to the laws and legislations which were made by the legislators themselves.

That is also the main cause of the wrong general belive that the Legislative Body has been considered by some as the den of thieves in the Indonesian politics. Since according to the cultural view of the Indonesian in general, in which the legislators are in principle, part of the Legislative Body as an institution, therefore, criminologically, there must be an effort to reform that big potentiality of evil in the Pancasila Legal System in which the legislators and the products that they produced might have been the criminogenic factors which endangering the purpose and the aim of the Nation State of Indonesia, in which the legal system must serve the main purpose of the law i.e. to make human as human being (*nguwongke wong*); and in this case to protect all of the Indonesian birthpace which has been stipulated as the dignified purpose in the Indonesian Constitution.

⁶ At the time the Ministry of Agriculture was a member of a political party.

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