THE INTERPRETATION OF ADMINISTRATIVE COURT IN IMPLEMENTING TRANSPARENCY AND PARTICIPATORY PRINCIPLES IN THE APPOINTMENT OF THE CONSTITUTIONAL COURT JUSTICE BY PRESIDENT

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THESIS ADVISOR RECOMMENDATION LETTER

This thesis entitled "THE INTERPRETATION OF ADMINISTRATIVE COURT IN IMPLEMENTING TRANSPARENCY AND PARTICIPATORY PRINCIPLES IN THE APPOINTMENT OF THE CONSTITUTIONAL COURT JUSTICE BY PRESIDENT" prepared and submitted by Herti Septiuniy in partial fulfillment of requirements for the degree of Bachelor of Law in the Faculty of Humanities has been reviewed and found to have satisfied the requirements for a thesis fit to be examined. Therefore I recommend this thesis for Oral Defense.

Cikarang, Indonesia, January 15th, 2015

[Signature]

Yance Arizona, S.H., M.H.
Advisor
DECLARATION OF ORIGINALITY

I declare that this thesis, entitled “THE INTERPRETATION OF ADMINISTRATIVE COURT IN IMPLEMENTING TRANSPARENCY AND PARTICIPATORY PRINCIPLES IN THE APPOINTMENT OF THE CONSTITUTIONAL COURT JUSTICE BY PRESIDENT” is, to the best of my knowledge and belief, an original piece of work that has not been submitted, either in whole or in part, to another university to obtain a degree.

Cikarang, Indonesia, January 15th, 2015

Herti Sephiany
PANEL OF EXAMINERS APPROVAL SHEET

The Panel of Examiners declares that the thesis entitled "THE INTERPRETATION OF ADMINISTRATIVE COURT IN IMPLEMENTING TRANSPARENCY AND PARTICIPATORY PRINCIPLES IN THE APPOINTMENT OF CONSTITUTIONAL COURT JUSTICE BY PRESIDENT" that was submitted by Herti Septiany majoring in Law from the Faculty of Humanities was assessed and approved to have passed the Oral Examination on Cikarang, Indonesia, February 13th, 2015.

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ABSTRACT

“The Interpretation of Administrative Court In Implementing Transparency and Participatory Principles in The Appointment of Constitutional Court Justice by President”

The selection process of the constitutional court justice is must be implemented base on transparency and participatory principles. Transparency is a principle that gives an obligation for government to open in gives all of informations about the administrative decision in the appointment of the constitutional court justice. On the other hand the meaning of participatory is the process of society to participates, gives their input, suggestion and opinion about the selection of the constitutional court justice. Because of the reason that President was not implemented transparency and participatory principles in the appointment of constitutional court justice which stated in the Presidential Decree Number 87/P Year 2013 so Yayasan Lembaga Bantuan Hukum Indonesia (YLBHI) and Indonesia Corruption Watch (ICW) was submitted the lawsuit to Administrative Court of Jakarta. In the verdict of Administrative Court of Jakarta, the justices were argued that Presidential Decree Number 87/P Year 2013 violated and was not implemented transparency and participatory principles. But between those verdicts in Administrative Court of Jakarta and High Court of Administrative of Jakarta, there was different interpretation about legal standing of plaintiff, that is the right of an organization to sue. Moreover there is no a system which regulates about the procedure of the appointment of the constitutional court justice.

Keywords: Transparency, Participatory, Administrative Decision.
ABSTRACT

“Penafsiran Peradilan Tata Usaha Negara Terhadap Penerapan Prinsip Transparansi dan Partisipasi Dalam Pengangkatan Hakim Konstitusi Oleh Presiden”


Keywords: Transparency, Participatory, Administrative Decision.
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CHAPTER I
INTRODUCTION

1.1 Background

One of the judiciary power reform that occured in Indonesia was the establishment of the Constitutional Court to conduct judicial power with the purpose to enforce law and justice.\(^1\) This is accordance with amendment of the Constitution 1945 in 1999 to 2000 when the idea to establish Constitutional Court adopted in that amendment and formulated in Article 24 Paragraph (2) and Article 24C of the third amendment of the Constitution and the idea become stronger to establish Constitutional Court.\(^2\) After that amendment, Government and House of Representative (as known as DPR) were discussed a draft on formulation of Law about Constitutional Court, the draft was finally agreed and passed in Plenary Session on August 13, 2003 and Law of Constitutional Court was signed by Megawati Soekarnoputri as President of Indonesia, called as Law Number 24 Year 2003 about Constitutional Court.\(^3\) Constitutional Court is one of judicial power institution which stated in Constitution 1945 of Republic Indonesia.\(^4\) Since the first time the recruitment process of constitutional court justice was conducted

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\(^1\) Eko Prasojo, *Mahkamah Konstitusi Dalam Sistem Hukum dan Politik Indonesia dalam Jentera Mahkamah Konstitusi*, 11\(^{th}\) edition tahun III, Pusat Studi Hukum & Kebijakan Indonesia, Jakarta 2006, p.28

\(^2\) *Profile Constitutional Court of Republic Indonesia*, 1\(^{st}\) edition, Secretariat General and Registrar’s of the Constitutional Court, Jakarta 2010, p.3

\(^3\) *Ibid*, p.4

\(^4\) Bagian Penjelasan Undang-Undang Nomor 8 Tahun 2011 tentang Perubahan Kedua Atas Undang-Undang Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi
through three institutions. Those were President, House of Representative and Supreme Court (as known as MA). Later, those institutions conducted selection process of constitutional court justice with mechanism that each institution nominated three candidates of constitutional court justice to President and then President appointed them as constitutional court justice.⁵

On August 15, 2003 President issued Presidential Decree Number 147/M Year 2003 about the appointment of constitutional court justice followed by the pronouncement of the official oath for constitutional court justice on August 16, 2003, the constitutional court justices immediately work and performed their duties afterwards.⁶ The purpose of Constitutional Court establishment in constitutional reform that occurred in Indonesia is to maintain balance and suitability between product of Legislative (DPR) and President in the form of legislation which appropriate with the Constitution of Indonesia, and moreover the purposes of Constitutional Court establishment also as an organization which supervise activity of high state organ if it violate Constitution of Indonesia.⁷ The review conducted by Constitutional Court is an appropriately review between Legislative products such as legislation with norm that exist in Constitution about content (materiil) or procedure (formil) from that legislation.⁸ Eko Prasojo said that:

“the decision which issued by Constitutional Court not only binding for legislative and executive, but also judicial institution in all stages so

⁵ Profile Constitutional Court of Republic Indonesia, first edition, Secretariat General and Registrar’s of the Constitutional Court, Jakarta 2010, p.4
⁶Ibid, p.5
⁷ Eko Prasojo, Mahkamah Konstitusi Dalam Sistem Hukum dan Politik Indonesia dalam Jentera Mahkamah Konstitusi, 11th edition tahun III, Pusat Studi Hukum & Kebijakan Indonesia, Jakarta 2006, p.28
⁸Ibid
Constitutional Court has quality as legal judiciary institution constitution that must be independent”.9

In the same article Eko Prasojo also said that:

“independence of Constitutional Court can determine how the success from implementation of function and authority in power control so to create and make Constitutional Court become independent so the procedure of selection and requirements of candidate of constitutional court justice be an important thing so the quality of selection and fulfillment of requirements from candidate of constitutional court justice become an independence key of Constitutional Court”.10

The appointment procedure of constitutional court justice is regulated in CHAPTER IV Article 15 until Article 21 of Law Number 8 Year 2011 regarding Second Amendment of Law Number 24 Year 2003 about Constitutional Court. Based on Article 18 Paragraph (1) of Law Number 8 Year 2011 about Second Amendment of Law Number 24 Year 2003 about Constitutional Court, it stated that “Hakim konstitusi diajukan masing-masing 3 (tiga) orang oleh Mahkamah Agung, 3 (tiga) orang oleh DPR, dan 3 (tiga) orang oleh Presiden, untuk ditetapkan dengan Keputusan Presiden”.

Transparency and participatory principles in the process of the appointment of constitutional court justice also become a support aspect in creating and establishing Constitutional Court to become an independent institution which does not depend on another institution, so it is expected to avoid an interest of certain group that influences the verdict of Constitutional Court. Transparency and participatory principles in the appointment process of constitutional court justice stated in Article 19 of Law Number 8 Year 2011 about Second Amendment of Law Number 24 Year 2003 about Constitutional Court which stated that

9 Ibid
10 Ibid, p.33-34
“Pencalonan hakim konstitusi dilaksanakan secara transparan dan partisipatif”. Furthermore the appointment of constitutional court justice also must be implemented objective and accountable in accordance with Article 20 Paragraph (2) of Law Number 8 Year 2011 about Second Amendment of Law Number 24 Year 2003 about Constitutional Court which stated that “Pemilihan hakim konstitusi sebagaimana dimaksud pada Ayat (1) dilaksanakan secara obyektif dan akuntabel”. It stated clearly that transparency, participatory, objective and accountable principles are basic principles that must be implemented in the process and procedure of the appointment of constitutional court justice. Therefore it will be created independence of Constitutional Court in implementating their duties and obligations.

As has already mentioned before, the appointment of constitutional court justice stated through Presidential Decree. Upon that matter, Presidential Decree Number 87/P year 2013 about The Appointment of Constitutional Court Justice on behalf Prof. Dr. Maria Farida Indrati, S.H., M.H and Dr. Patrialis Akbar, S.H., M.H, becomes a case in Administrative Court Jakarta and High Court of Administrative Court Jakarta. The position of President is as a state official, where in administrative law the position of President is subject of law who has authority to issue an administrative decision. Moreover the Presidential Decree about the appointment of constitutional court justice is an administrative decision that can be sued as an object of lawsuit in Administrative Court. Basically, an administrative decision which issued by state official as the object of case in Administrative Court must be concrete, individual and final and all of those elements must be fulfilled.
According to Article 1 of Law Number 51 Year 2009 about Second Amendment of Law Number 5 Year 1986 about Administrative Court, it stated that the meaning of entity or state official is entity or state official who implement interest of governance based on legislation that applied. On the other hand, still in the same Article and Legislation, it explain that the meaning of administrative decision is a written decision which issued by entity or state official that contain about administrative legal action based on legislation that applied, which concrete, individual, and final, and also cause legal impact for a person or civil legal entity. Presidential Decree Number 87/P/2013 becomes object of case in Administrative Court Jakarta as impact of the appointment process of constitutional court justice which was not based on transparency and participatory principles that clearly and directly become the basic principles in the appointment process of constitutional court justice which also stated in Law Number 8 Year 2011 about Constitutional Court. Because there was no implementation and conduction of transparency and participatory principles in the appointment of constitutional court justice which stated in Presidential Decree Number 87/P/2013, Yayasan Lembaga Bantuan Hukum Indonesia (Indonesia Legal Aid Foundation/ YLBHI) and Indonesia Corruption Watch (here in after will be referred to as ICW) submitted a lawsuit to the Administrative Court of Jakarta. The defendant of the lawsuit was President of the Republic of Indonesia and the object of the dispute was Presidential Decree Number 87/P/2013. In that lawsuit, the plaintiffs used the right of organization to sue as their legal standing to file that lawsuit. Basically, the right of organization to sue was used by plaintiff in the cases about environmental cases. This is the first time that plaintiff uses the right of organization to sue to filed a lawsuit in
Administrative Court related to the appointment of constitutional court justice in the case. As result, there were different view and argumentation conveyed between the Administrative Court of Jakarta’s judges and the High Court of Administrative Court of Jakarta’s judges about the method of interpretation of the right of organization to sue in this case.

1.2 Research Problems

Research problems are the main problems that become problem questions in this research. From the topic and title that have been choosen, there are some research problems in this research, those are:

1.2.1 How did the Administrative Court of Jakarta interpret transparency and participatory principles in the appointment of constitutional court justice in verdict of Administrative Court Jakarta?

1.2.2 How did the Administrative Court of Jakarta and the High Court of Administrative of Jakarta interpret legal standing of plaintiffs as a right of an organization to sue in decision of the appointment of constitutional court justice Number 87/P Year 2013?

1.3 Purposes and Benefits of the Research

1.3.1 Purposes of the Research

Purpose of research is to answer of research problems. The purposes of this research consist of:

a. To understand how did Administrative Court in Jakarta interpret transparency and participatory principles in the appointment of constitutional court justice in verdict of Administrative Court Jakarta;
b. To understand how did Administrative Courts in Jakarta interpret legal standing of plaintiffs that is right of organization to sue in decision of the appointment constitutional court justice Number 87/P Year 2013.

1.3.2 Benefits of the Research

Benefit of research is everything that becomes the benefits which obtained during conduct this research. The benefits obtained from this research are:

a. To author, through this research it can increase knowledge of author widely and deeply about theory or practice of transparency and participatory principles in the appointment process of constitutional court justice;

b. To society, this research can become consideration to conduct process and procedure of the appointment of constitutional court justice in the future that implement and based on transparency and participatory principles.

1.4 Research Method

This section explain about type of research, problem approach, legal materials and and method of data collection.

1.4.1 Type of Research

Type of research that used in this research is socio legal research. The meaning of socio legal is method of research that connect law and social problem about obedient to legislation, implementation of law where the method of data collection consist of interview and observation.\textsuperscript{11}

1.4.2 Problem Approach

\textsuperscript{11}Peter Mahmud Marzuki, \textit{Penelitian Hukum}, 9\textsuperscript{th} edition, Kencana, Jakarta 2014, p.128-129
In this research there are 3 (three) problem approaches that used, those are conceptual approach, statutory approach and case study. Conceptual approach is problem approach that look the problems through doctrine and opinion of legal expert in law.\textsuperscript{12} Statutory approach is approach that look and refer to legislation that applied and related with legal issues in the research.\textsuperscript{13} Beside that this research also uses case study which has the meaning as a study about one issue or case from legal aspect.\textsuperscript{14} In this research the issue or case refers to the Presidential Decree Number 87/P Year 2013 about Appointment of Constitutional Court on behalf Prof. Dr. Maria Farida Indrati, S.H., M.H and Dr. Patrialis Akbar, S.H., M.H which becomes the object of dispute in Administrative Courts in Jakarta.

1.4.3 Legal Material

Legal Material is all of legal materials that used by the author in conducting this research. There are two kinds of materials that used as legal materials those are:

A. Primary legal material is main legal material that used in this research to answer research problems that exist in this research. Primary legal materials in this research consist of materials that the author obtained from interview to Head of the Administrative Court justice of Jakarta in the case Number 139/G/2013/PTUN-JKT.

B. Secondary legal material is second legal material that used by the author in conducting this research to answer research problems that exist in this research. Secondary legal material in this research consists of materials

\textsuperscript{12} Peter Mahmud Marzuki, \textit{Penelitian Hukum}, 9\textsuperscript{th} edition, Kencana, Jakarta 2014, p.135
\textsuperscript{13} Peter Mahmud Marzuki, \textit{Penelitian Hukum}, 9\textsuperscript{th} edition, Kencana, Jakarta 2014, p.133
\textsuperscript{14} Peter Mahmud Marzuki, \textit{Penelitian Hukum}, 9\textsuperscript{th} edition, Kencana, Jakarta 2014, p.134
that come from Legislation which exist and applied and also Constitutional Court decision which consist of:

1) Law Number 8 Year 2011 about Second Amendment of Law Number 24 Year 2003 about Constitutional Court;
2) Law Number 51 Year 2009 about Second Amendment of Law Number 5 Year 1986 about Administrative Court;
3) Law Number 28 Year 1999 about State Implementation That Clean and Free From Corruption, Colution and Nepotism;
4) Government Regulation Subtitution Law Number 1 Year 2013 about Second Amendment of Law Number 24 Year 2003 about Constitutional Court;
5) Presidential Decree Number 87/P/2013 about Removal of Judge of Constitutional Court;
6) Administrative Court of Jakarta verdict Number 139/G/2013/PTUN-JKT, and
7) High Court of Administrative Court of Jakarta verdict Number 55/B/2014/PT.TUN.JKT

The legal materials which also used are legal materials that support and help primary legal materials such as book, journal, article, encyclopedia and legal dictionary which give information to primary legal materials that related with topic and problems that exist in this research.

1.4.4 Method of Data Collection

Data in this research is obtained from reading and analyzing the Administrative Court of Jakarta’s verdict Number 139/G/2013/PTUN-JKT and
the Administrative verdict of the High Court of Administrative of Jakarta Number 55/B/2014/PT.TUN-JKT related with lawsuit where the object of case is Presidential Decree Number 87/P/2013 about The Appointment of Constitutional Court Justice. Furthermore, data also obtained from the result of interview with Head of Justice in Case Number 139/G/2013/PTUN-JKT in the Administrative Court of Jakarta, that is Mr. Teguh Satya Bhakti, SH.,MH. At the beginning, the author planned to do interview to all of justices who handled and decided case Number 139/G/2013/PTUN-JKT in the Administrative Court of Jakarta and also all of justices who handled and decided case Number 55/B/2014/PT.TUN-JKT in the High Court of Administrative of Jakarta. But when the author tried to do that plan, the author must faced obstacles such as prohibition to do interview to all of justices because that case was still going on in the level of cassation and that verdict did not obtain legal certainty yet. Another obstacles where the author must faced is about permission, and time that was too short to obtain data.

1.5 Conceptual Framework

In this conceptual framework, the author describes and explains about all of the concepts that are used by author as the basic reference to do this research. In this research, conceptual framework that explained are the concept of Administrative Decision (For the next known as KTUN), procedure of review of administrative decision (KTUN) in Administrative Court, concept of transparency and and participation and also concept of method of interpretation. Hereby the short explanation about conceptual framework that used:

1.5.1 Administrative Decision (KTUN)
There are so many terms about “decision” in many languages which usually and generally used, such as in Dutch, decision called as “beschikking” on the other hand in France, term of decision called as “acte Administratif” and in Germany it called as “Verwaltungsakt”.\textsuperscript{15} The term of beschikking in Belanda for the first time were used by Van der Pot and Van Vollenhoven and for the next that term enter and used in Indonesia through Mr. WF. Prins.\textsuperscript{16} However the term of beschikking itself in Indonesia translated with so many terms by some people, for example is Mr. Drs. E. Utrecht and Prof. Boedisoesetya translate the term of beschikking as “Determination” and for some another people it translated as “Decision”.\textsuperscript{17}

“Mr. Drs. E. Utrecht in his book with the title is “Pengantar Hukum Tata Usaha Negara Indonesia”, said that Beschikking (Determination) is a public legal action that one side which implemented by government tools according to the special power”.\textsuperscript{18}

“Mr. WF. Prins; in his book with the title is “Inleiding in het Administratief recht van Indonesia” – said that beschikking as a legal action on one side in government field that have done by government tools based on authority that exist in that tools or organ”.\textsuperscript{19}

So, administrative decision is a decision or determination which issued by State official in implementation of their authority in a government process that concrete, individual and final and it incuring legal impact. On the other hand according to Law of Administrative Court, the meaning of Administrative Decision stated in Article 1 of Law Number 51 Year 2009 about Second Amendment of Law Number 5 Year 1986 about Administrative Court which stated that:

\textsuperscript{15} SF Marbun, \textit{Peradilan Tata Usaha Negara}, Cetakan Kedua, Liberty, Yogyakarta 2003, p.39
\textsuperscript{16} Ibid
\textsuperscript{17} Ibid
\textsuperscript{18} Ibid
\textsuperscript{19} Ibid
“Keputusan Tata Usaha Negara adalah suatu penetapan tertulis yang dikeluarkan oleh badan atau pejabat tata usaha negara yang berisi tindakan hukum tata usaha negara yang berdasarkan peraturan perundang-undangan yang berlaku, yang bersifat konkret, individual, dan final, yang menimbulkan akibat hukum bagi seseorang atau badan hukum perdata”.

From the meaning that has mentioned above, it stated that the natures of Administrative Decision are concrete, individual and final. SF Marbun in his book that the title is “Peradilan Tata Usaha Negara” in (2003), he explained about the meaning of each words of concrete, individual and final as the natures of Administrative Decision, those are:

a. Concrete has the meaning as the object of Administrative Decision is not abstract, it means that the object has specific form and can be determined what becomes the object of that Administrative Decision, so everything about what the things, and to who that decision issued, and also the object and subject in that Administrative Decision stated clearly.

b. Individual has the meaning as Administrative Decision is not purposed generally or to citizens widely where the subject related with many people not as a person. So it must be determined and purposed to who that Administrative Decision and if the subject or person who purposed more than one so each of person or each of name who purposed by that Administrative Decision must be mentioned clearly.

c. Final has the meaning that Administrative Decision do not need an approval for another entity or institution to issue that Administrative Decision, but there are some Administrative Decision which need an

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20 Ibid, p.54
approval form another organization that related with that Administrative Decision.

But not all of administrative decisions that issued by state official can be mentioned as administrative decision that can be sued as the object of case in Administrative Court. There are some categories that not include in administrative decision that can be sued and become the object of case in Administrative Court. According to Article 2 of Law Number 51 Year 2009 about Second Amendment of Law Number 5 Year 1986 about Administrative Court, it stated that:

“Tidak termasuk dalam pengertian Keputusan Tata Usaha Negara menurut Undang-Undang ini:
1. Keputusan Tata Usaha Negara yang merupakan perbuatan hukum perdata;
2. Keputusan Tata Usaha Negara yang merupakan pengaturan yang bersifat umum;
3. Keputusan Tata Usaha Negara yang masih memerlukan persetujuan;
4. Keputusan Tata Usaha Negara yang dikeluarkan berdasarkan ketentuan Kitab Undang-Undang Hukum Pidana dan Kitab Undang-Undang Hukum Acara Pidana atau peraturan perundang-undangan lain yang bersifat hukum pidana;
5. Keputusan Tata Usaha Negara yang dikeluarkan atas dasar hasil pemeriksaan badan peradilan berdasarkan ketentuan peraturan perundang-undangan yang berlaku;
6. Keputusan Tata Usaha Negara mengenai tata usaha Tentara Nasional Indonesia;
7. Keputusan Komisi Pemilihan Umum baik di pusat maupun di daerah mengenai hasil pemilihan umum”.

Presidential Decree Number 87/P Year 2013 about the Appointment of Constitutional Court Justice fulfill cristeria as administrative decision (KTUN) because that Presidential Decree is concrete, individual and final. That Presidential Decree Number 87/P Year 2013 is concrete because that Presidential Decree can be determined what become the object of that Presidential Decree that is Presidential Decree Number 87/P Year 2013 about Appointment of Constitutional Court Justice. Moreover, Presidential Decree also fulfill as
individual requirement because subject that purposed by Presidential Decree is a person as individual and it was not purposed to public, that is for Prof. Dr. Maria Farida Indrati, S.H., M.H and Dr. Patrialis Akbar, S.H., M.H. On the other hand that Presidential Decree also fulfill the requirement as Administrative Decision which final because that Presidential Decree does not need approval from another parties to legitimate it. So from that explanation it looked clearly that Presidential Decree Number 87/P Year 2013 fulfill all of criterias as Administrative Decision that can be sued and become the object of case in Administrative Court.

1.5.2 Review Procedure of Administrative Decision in Administrative Court

Court in Indonesia legal system basically has the functions to complete written legal provision through legal creation (rechtsvorming) and legal finding (rechtsvinding), therefore at the the end, judge and court have the same function and role to create new law (creation of new law). Roles and functions of court justice as creation of law and implementation of that law. But not only justice who has role in one judiciary institution but also Administrative Court has role as power stabilization between power and authority which had by state official to issue Administrative Decision with their citizen as purpose of issue of Administrative Decision

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According to Article 53 Paragraph (2) point a of Law Number 51 Year 2009 about Second Amendment of Law Number 5 Year 1986 about Administrative Court stated that:

"Alasan-alasan yang dapat digunakan dalam gugatan sebagaimana dimaksud dalam ayat (1) adalah:
   a. Keputusan Tata Usaha Negara yang digugat itu bertentangan dengan peraturan perundang-undangan yang berlaku.......", 

In Article of Law above, it can explained that provision violate legislation that applied has the meaning that violate the provision in legislation that exist which procedural/formal, violate the provision that exist in legislation which material/substansial and issued by entity or state official who has not authority to issue that decision.23

The review of Administrative Decision (KTUN) in Administrative Court consist of 3 (three) steps of review such as authority, procedure and substance. The first steps are review of the authority that related with whether state official who issue Administrative Decision has an authority in accordance with legislation that applied. The second steps are procedural review related with whether the procedure has fulfilled by state official in issue Administrative Decision in accordance with legislation which applied. On the other hand, the last steps are review about substance that is review by Administrative Court about substance of Administrative Decision that becomes the object of the case.

Process of handling of case in court for the first steps begin with steps of induction where everything that conducted such as formulate of facts that exist about the case, look for and find about cause-impact relationship, dan analyze

probability, so that process of handling of case by judge in court in the first and second stage are “*judex facti*”. Processes of legal implementation in solve one case in Administrative Court scope through 3 (three) steps, those are:

a. The first steps are collect of the facts. On this step justice select and sort all of the things that exist in one that accident so for the next justice also review through evidence that available to ensure about truth from that accident. So on this first steps justice must be ensure and believe completely that the accident is objective and in accordance with the facts that exist so this steps include in methodologically include in framework of inductive approach;

b. The second steps are identification of law. In this second steps justice assest all of legal facts and that has been revealed and proved of the truth so for the next, all of legal facts that revealed qualified based on what legal relationship. Methodologically this step include in deductive step. On the first steps justice indentificate law regulation and interpretate to everything of law regulation that can be implemented in that facts so besides implement written legal norm which stated in norm law or legislation, justice also can implement unwritten legal norm to test legitimate of an Administrative Decision where the result of legal identification and legal implementation in those written or unwritten norm are formulated in legal consideration by justice;

c. The third or the last steps that is formulate the principles that become indicator of assestment in that legal fact. In the last step, justice determine

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24 *Op. cit.*, Jazim Hamidi, p.87
about the question if Administrative Decision that become the object of case in Administrative Court violate the principles that become indicator of assestment to that legal fact or not and then finally justice will determine how legitimate of that Administrative Decision in their decision.

1.5.3 Transparency and Participation Principles

According to Kamus Besar Bahasa Indonesia (KBBI), transparency is about translucent; real; clear.26 On the other hand according to Kamus Besar Bahasa Indonesia (KBBI), participatory is the thing of participate in one activity; participation; participate.27 Public participation in form involving citizens in the appointment process of constitutional court justice is one of good governance principle as actualization of democracy.28 Therefore, each effort that conducted by government in increasing of public service quality become an important point in public participation.29 In the appointment process of constitutional court justice that become an important and main issue is citizens participation which can reflect and actualize democracy principle that respected in one state so it become the right thing when all of government efforts to actualize good governance implement public participatory principle as obliged principle that must be implemented by government.30

There are 8 (eight) characteristics that become indicators to actualize Good governance such as participatory, oriented consensus, accountable, transparency, responsive, effectively and efficiently, fair and inclusive and follow the rule of

26 kbibi.web.id/transparansi (Sabtu, 17 Januari 08:22 WIB)
27 kbibi.web.id/partisipasi (Minggu, 2 November 09:47 WIB)
29 Ibid, p.185
30 Ibid, p.190
In actualization of governance that clean from practice of Corruption, Collution and Nepotism (for the next known as KKN) and actualize good governance in governance process of one state, it need to implement the principle of transparency and participatory in one government sytem to conduct all of state implementation activity, such as formulation of Presidential Decree about the appointment of constitutional court justice as Administrative Decision.

Basically Indonesia is a state that adopts democracy principle. The basic principle of democracy is the highest power in one system of government that hold by citizens. As actualization of state which adopt democracy principle, so Presidential Decree in the appointment of constitutional court justice must be implement transparency and participatory principles. Participation of citizens as outside party of government in the appointment process of constitutional court justice that related with public interest become an important thing and need to be implemented.

Participation of citizens in the appointment process of constitutional court justice is one important thing if it related with basic principle of democracy that the highest power is on citizens.

There are 3 (three) important elements that must be reached by government in public participation such as democracy, participatory, and accountability. Participatory can be conduct directly or not directly through legitimate institution or representative institution, moreover the most important is participatory must be

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33 *Ibid*, p.191
organized and informed to all of citizens generally. Transparency has the meaning that all of taking and implementation of decision conducted based on a procedure that follow the rule and regulation so the information about that decision are available freely and can be accessed directly for everyone that will be suffered the effect of implementation that decision and also therefore there are enough informations which easy to understand provided for they are who need it.

However essentially transparency and participatory principles is a united which cannot be separated each other. In the appointment process of constitutional court justice, the first thing that must be conducted by President is implement transparency principle that is open in the appointment process of constitutional court justice from the beginning carried out until the end of the process. Then, when President has implemented transparency principle well so President also must be apply participatory principle which involving public in the appointment process of constitutional court justice. Simply it can be concluded that the implementation of transparency and participatory principles by President is a thing that must be conduct in the appointment process of constitutional court justice.

1.5.4 Method of Interpretation


Method of interpretation is a method which implemented or used by justice or another law enforcer to interpret the legislation.\textsuperscript{36} Method of interpretation is one of method in legal finding process which explains in detail and clearly about text of legislation and the meaning of that legislation.\textsuperscript{37} According to Sudikno Mertokusumo and Mr. A. Pitlo, in their book with the title “Bab-Bab Tentang Penemuan Hukum”, and Mochtar Kusumaatmadja and B. Arief Sidharta in their book “Pengantar Ilmu Hukum, there are some methods of interpretation that usually and generally used those are:

a. Language Interpretation

Basically, interpretation of legislation always becomes explanation of legislation from language aspect.\textsuperscript{38} In language interpretation all of provisions and written legal rule explained use language according to the meaning of every words or sentences based on language that usually used by society.\textsuperscript{39} This method of interpretation or which usually called as grammatical interpretation is one way of interpretation to explain the meaning of legislation simply to know what become the meaning of the legislation provision through describe it according to language, arrangement every words or it’s vocal.\textsuperscript{40}

b. Teologist Interpretation

\textsuperscript{36} Mochtar Kusumaatmadja dan B. Arief Sidharta, \textit{Pengantar Ilmu Hukum}, Alumni, Bandung 2000, p.99
\textsuperscript{37} Sudikno Mertokusumo dan Mr. A. Pitlo, \textit{Bab-Bab Tentang Penemuan Hukum}, Citra Aditya Bakti bekerjasama dengan Konsorium Ilmu Hukum, Departemen Pendidikan dan Kebudayaan dan The Asia Foundation, Yogyakarta 1993, p.13
\textsuperscript{38} \textit{Ibid}, p.14
\textsuperscript{39} \textit{Op.cit}, Mochtar Kusumaatmadja dan B. Arief Sidharta, p.100
\textsuperscript{40} Sudikno Mertokusumo dan Mr. A. Pitlo, \textit{Bab-Bab Tentang Penemuan Hukum}, Citra Aditya Bakti bekerjasama dengan Konsorium Ilmu Hukum, Departemen Pendidikan dan Kebudayaan dan The Asia Foundation, Yogyakarta 1993, p.14
Another interpretation method is teologist interpretation, that is interpretation the meaning of legislation that stated based on societal purpose.\textsuperscript{41} In this interpretation method, legislation in accordance with relation and social situation that newer so the tool to solve case in nowdays seen and considered from provision of legislation that has not been in accordance.\textsuperscript{42}

c. Sociologist Interpretation

Sociologist interpretation has the meaning as process of conducted interpretation through causes of factors that exist in society or in development of society that can give explanation about the reason why Government or House of Representative submit a legislation draft (RUU).\textsuperscript{43}

d. Systematic Interpretation

The occurrence relationship between a legislation to another legislation always relates and connects each other.\textsuperscript{44} Systematic interpretation or logic interpretation is interpretation of legislation through the way connect between one legislation to another legislation as a part of all legislation system.\textsuperscript{45} Besides that the systematic interpretation also has the meaning as interpretation method that conduct systematically such as relate on provision in same legislation or legislation that connected with provision of legislation that is interpreted such as

\begin{flushleft}
\textsuperscript{41} Ibid, p.15  \\
\textsuperscript{42} Ibid, p.15  \\
\textsuperscript{43} Mochtar Kusumaatmadja dan B. Arief Sidharta, \textit{Pengantar Ilmu Hukum}, Alumni, Bandung 2000, p.106  \\
\textsuperscript{44} Sudikno Mertokusumo dan Mr. A. Piñlo, \textit{Bab-Bab Tentang Penemuan Hukum}, Citra Aditya Bakti bekerjasama dengan Konsorium Ilmu Hukum, Departemen Pendidikan dan Kebudayaan dan The Asia Foundation, Yogyakarta 1993, p.16  \\
\textsuperscript{45} Ibid, p.16-17
\end{flushleft}
the term that used in civil law must be understood on relation with system of civil law as legal aspect.46

e. Historical Interpretation

Another method of interpretation is historical interpretation which has the meaning is interpret the legislation through research history of the legislation or on the other hand historical interpretation is an explanation of legislation according to history of that legislation.47 This historical interpretation basically refers to examination or research of legal history (rechtshistorische-interpretatie) of that legislation or legislation history itself (wets historische interpretatie).48 But historical interpretation has the meaning as legislation historical interpretation which interpret legislation or written legal provision according to history of conduction that written legal provision.49 There are two types of historical interpretation those are interpretation based on legislation and interpretation based on legal history.50

f. Comparative Interpretation

The next interpretation is comparative interpretation, that is one way of interpretation through compare the explanation based on legal comparation to look for clearance about a provision of legislation.51

g. Futuristic Interpretation

46 Op.cit, Mochtar Kusumaatmadja dan B. Arief Sidharta, p.102
47 Op.cit, Sudikno Mertokusumo dan Mr. A. Pitl, p.17
48 Mochtar Kusumaatmadja dan B. Arief Sidharta, Pengantar Ilmu Hukum, Alumni, Bandung 2000, p.100
49 Ibid, p.101
50 Sudikno Mertokusumo dan Mr. A. Pitlo, Bab-Bab Tentang Penemuan Hukum, Citra Aditya Bakti bekerjasama dengan Konsorium Ilmu Hukum, Departemen Pendidikan dan Kebudayaan dan The Asia Foundation, Yogyakarta 1993, p.17
51 Ibid, p.19
Futuristic interpretation or method of legal finding that anticipate is an explanation of legislation provision that refer to legislation that have not legal power yet (Algra, Rechtsingang, hal.62).  

h. Extensive Interpretation

Extensive interpretation is one of legal interpretation method that used by justice especially to interpret a legislation through extend the meaning of words that exist in that legislation.  

i. Restrictive Interpretation

Restrictive interpretation also one of interpretation method that used by justice to interpret a legislation but in restrictive interpretation, method that used across from extensive interpretation that is narrow the meaning of words that exist in that legislation.

1.6 Systematics of Writing

This section explains about what previously been explained in every chapter. The purpose of this systematics of writing is give limitation and line in writing this research, so the writing will not out of the topic, title and problems that taken in this research. Systematics of writing described as follows:

CHAPTER I INTRODUCTION

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52 Ibid, p.19
54 Ibid
This chapter explains about background of the problems in this research based on title and topic and this chapter consists of research problems, purposes of research, benefits of research, conceptual framework and systematics of writing.

CHAPTER II  TRANSPARENCY AND PARTICIPATORY PRINCIPLE

This chapter explains about theory of transparency and participatory principles especially in the appointment of constitutional court justice.

CHAPTER III  THE APPOINTMENT OF CONSTITUTIONAL COURT JUSTICE BY HOUSE OF REPRESENTATIVE (DPR), SUPREME COURT (MA) AND PRESIDENT

This chapter explains about theory, method and procedure of the appointment of constitutional court justice by House of Representative (DPR), Supreme Court (MA) and President.

CHAPTER IV  ANALYZES

This chapter explains and answer about all of research problems that exist in this research such as about consideration of the Administrative Court of Jakarta’s justice in case Number 139/G/2013/PTUN-JKT and in the
High Court of Administrative of Jakarta in case Number 55/B/2014/PT.TUN-JKT to decide that case and interpretation transparency and participatory principles in the appointment of constitutional court justice and also about legal standing the right of organization to sue by the Administrative Courts in Jakarta.

CHAPTER V

CONCLUSION AND SUGGESTION

This chapter explains about conclusion and suggestion of the author concerning the result of the research.
CHAPTER II
TRANSPARENCY AND PARTICIPATORY PRINCIPLES

2.1 Transparency Principle

Transparency is one of the principles in the principles of good governance. Briefly transparency has the meaning as openness. The appointment of the constitutional court justice through President, House of Representative and Supreme Court basically must implements transparency principle. The meaning of transparent in the appointment of the constitutional court justice is the attitude of President to publicly about the things which related to the appointment process of the constitutional court justice, from recruitment until the appointment process of the constitutional court justice. In the part of explanation of Article 53 Paragraph (2) point b of Law Number 9 Year 2004, it explain the meaning of good governance which consist of the principles of legal security, orderly implementation of state, openness, proportionality, profecionality and accountability, which that statement also stated in Law Number 28 Year 1999
about State Implementation That Clean and Free From Corruption, Colution and Nepotism.\textsuperscript{55}

The meaning of openness in the statement above is refers to transparency principle. According to Article 3 of Law Number 28 Year 1999 about State Implementation That Clean and Free From Corruption, Colution and Nepotism, the meaning of transparency principle is an openness in the thing that related to the right of citizens to obtain information about state implementation where true, honest and not discriminative but still in protection of human right, such as private human right, group and state secret.\textsuperscript{56} On the other hand transparency also has the meaning is provides informations of governance for public where those informations can be accessed easily and accurately by public.\textsuperscript{57}

Therefore in a governance process, to actualize democracy and good government, transparency principle is must implemented in the government enforcement. Transparency principle also becomes an indicator and important point to actualize good governance in one governance system. To develop and actualize good governance, transparency principle becomes more important in effort to actualize good governance.\textsuperscript{58} The meaning of transparency is opennes and access guarantee for the stakeholders to obtain all of informations related to the process which conducted in the administrative decision, moreover also about


\textsuperscript{56} Ibid

\textsuperscript{57} Samodra Wibawa, \textit{Mewujudkan Good Governance Melalui Pelayanan Publik: Good Governance dan Otonomi Daerah}, Gadjah Mada University Press, Yogyakarta 2014, p.80

supervision and evaluation in implementation of the administrative decision, so
government must opens in everything that related with public service.\textsuperscript{59}

Besides that government also must be transparent, open and provide all of
informations that related with all of government actions for society, for example is
government have to transparent in giving information about reason that become
background an administrative decision or government action, form of
administrative decision or government action and time or way to implement that
administrative decision or government action.\textsuperscript{60} Through the way to gives access
to all of informations like that, so society as stakeholders can assest the
government action whether the purpose of government to implement that
administrative decision in accordance and show society interest or just refer to
interest of another party or one group.\textsuperscript{61} Moreover, basically each citizen has the
right to obtain information as part of human right for each citizen to conduct
assessment of government work whether that government work has been right or
not.\textsuperscript{62} If it is reviewed and compared, to develop democratic state, so government
gives a guarantee of access for each citizen to know all of the informations about
government activity and finally each citizen has the right to know about anything
that exist and happen in one government institution.\textsuperscript{63}

Government gives guarantee the right for their citizen to know every activities
that will conduct or conducting by one government bireaucrachy, who are the
parties who include in that activity, include about amount and detail of budget are

\textsuperscript{59}Ibid.,
\textsuperscript{60}Ibid.,
\textsuperscript{61}Ibid,
\textsuperscript{62}Ibid, p.224
\textsuperscript{63}Ibid, p.225
used to conduct that activity.\textsuperscript{64} One of indicator that becomes determination for government to be assessed well or badly is determined by level of transparency in a government.\textsuperscript{65} Transparency also has very big implications or impacts for government ability to actualize many another governance indicators.\textsuperscript{66} Even transparency also gives very important and big contribution in effort of law enforcement and eradication practice of corruption, colution and nepotism which possible happen.\textsuperscript{67}

In other words, low of transparency in judiciary process is also caused judiciary institution and process of judiciary in Indonesia fail to enforce the law and justice.\textsuperscript{68} Success and failure in actualization of transparency principle will become very big for the meaning, role and benefit in effort to fix governance system and power management in Indonesia.\textsuperscript{69} Concept and principle of transparency refer in a condition where all of aspects from process of the government implementation and service are open for all of citizens and society who needs information, so all of informations that relate to government are obtained easily.\textsuperscript{70} If public can access and understand easily about all of aspects from the process of government implementation and service, such as requirement, cost and time which needed, procedure of that service, and right and obligation for implementation and user of services are publicated openly, so the practice of that service implementation has the high level of transparency.\textsuperscript{71}

\textsuperscript{64} Ibid, p.224
\textsuperscript{65} Ibid, p.226
\textsuperscript{66} Ibid, p.227
\textsuperscript{67} Ibid, p.228
\textsuperscript{68} Ibid, p.229
\textsuperscript{69} Ibid, p.231
\textsuperscript{70} Ibid, p.236
\textsuperscript{71} Ibid
If information about process of service implementation is difficult to obtained and some or all of aspects from the process of that service implementation are close for public or society widely, so the service implementation does not fulfill the requirements of transparency principle.\textsuperscript{72} Therefore, to indicates transparency in one public service at least there are 3 (three) indicators that can be used, the first indicator is indicates level of openness in the process of public service implementation and the meaning of assement to openness in there, include all of public service process, include about requirement, cost and time that needed and also mechanism or procedure that have to be fulfilled.\textsuperscript{73}

Next the second indicators of transparency is refers to understanding by society about whether regulation and service procedure is can understood easily by society generally, moreover the purpose of understanding not only understands from the meaning of the term but also understands about the meaning that exist in all of procedure and regulation of that.\textsuperscript{74} And the last, the third indicators of a service that transparency is society obtains informations about many aspects of public service implementation easily.\textsuperscript{75} In a process of administrative decision making, government not only have to more open to society in that process, even stakeholder also must involves in the process of administrative decision making and finally society will see and assest whether that administrative decision is managed and implemented for public interest or only implemented for government or a group interest.\textsuperscript{76}

\textbf{2.2 Participatory Principle}

\textsuperscript{72} Ibid
\textsuperscript{73} Ibid
\textsuperscript{74} Ibid, p.238
\textsuperscript{75} Ibid, p.240
\textsuperscript{76} Ibid, p.242
To actualize clean and authoritative governance, so government must implements all of their actions based on good government principles as the guideline of government to act.\textsuperscript{77} One of principle in good governance is participatory principle. To reflect and show participation from citizens in one process of governance, government also needs and have to obeys and implements the good governance principles in every interest and process of government implementation.\textsuperscript{78}

Citizen participation to participate actively in the appointment process of the constitutional court justice becomes an important thing in a government because the power and authority of citizen are the highest power in one state which are must respected as the first basic principle in one sytem of democratic government. Actually, citizen also holds the main role because all of the responsibility of public official basically must responsible to citizens. Indicators to examine legitimacy (rechtsmatigheid) of an administrative action and to examine the aspect of wisdom/benefit (doelmatigheid) of an administrative action are used principle of good government as unwritten legal principle that becomes guideline for government in their action.\textsuperscript{79}

Participatory is every citizen has the right and can use that right directly or not directly through the society organization to gives their opinion, and their aspiration in the appointment process of the constitutional court justice.\textsuperscript{80} Public participation is very needed in the appointment process of the constitutional court justice because through participatory society can gives input and suggestion relate

\textsuperscript{78} \textit{Ibid}, p.127
\textsuperscript{79} Op.cit, W. Riawan Tjandra, p.146
\textsuperscript{80} Op.cit, Samodra Wibawa, p.80
to the constitutional court justice candidate. However the participation of society is an obligatory to conducted and considered by President in the appointment of the constitutional court justice. Basically in the Law of Constitutional Court, it mentions that the appointment process of the constitutional court justice should involve society in that process. It has been conducted with the reason that society is a subject who will suffer the impact of the Presidential Decree.

In his writing Erwan Agus Purwanto says that:

“In accordance with the thing which was said by Smith and Ingram, some another politic scientific such as Sample (1993), Webler, Kastenholz, and Renn (1995), like were quoted by Glicken (2000:302), said that public participation in the process of decision making will bring advantages, such as give contribution to increasing of competence of decision makers through development quality of decision making, give legitimacy that bigger to decisions that made because public participation can increase public accountability in the process of decision taking, and then give positive image as a democratic society.” 81

Still in same writing, Erwan Agus Purwanto also says that:

“The thing that more important than all of those things, V. Denhart and B. Denhart (2003:50) were said that through public participation which wide in the process of public policy making so that citizens can help increase guarantee or certainty that voice and individual interest or groups that exist in society are listened and then responsed by government fairly”. 82

Moreover in his writing Erwan Agus Purwanto also say that

“Less different with Moynihan, Wilcox (1994) divided the level of society participation became five types, those were (1) give information, (2) consultation, (3) together decision making, (4) conduct action together, and (5) support activity that exist because society”. 83

82 Ibid
83 Ibid, p.189
This is the table that describes about public participatory based on type and level of society representative in the process of formulation a public policy (Moynihan (2003:170). 84

<table>
<thead>
<tr>
<th>Type</th>
<th>Representative Level</th>
<th>Decision:</th>
<th>Participation:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Participation</td>
<td>Narrow</td>
<td>less transparent, is made by public official.</td>
<td>symbolic, just a few people who involved.</td>
</tr>
<tr>
<td>Fake</td>
<td>Wide</td>
<td>is made by public official.</td>
<td>symbolic, although involve some or all groups that exist in society.</td>
</tr>
<tr>
<td>Partial</td>
<td>Decision: made by elite group of government with consider about suggest from group interest which limit.</td>
<td>Decision: made by government official with less influence from society participation.</td>
<td>Participation: involve all or some group of interest but the chance to</td>
</tr>
</tbody>
</table>

84Ibid, p.188
<table>
<thead>
<tr>
<th></th>
<th>hand some society has not chance.</th>
<th>participate available in limitation.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full</td>
<td>Decision: made by government official and group of interest that choosen.</td>
<td>Decision: made by government pejabat with very strong influence from society participation.</td>
</tr>
<tr>
<td></td>
<td>Participation: involve group of interest who has influence, but some citizen still has less chance.</td>
<td>Participation: wide society involve on discussion that intensive enough with government.</td>
</tr>
</tbody>
</table>

There is a time when government institution faces crisis on respons from society, so to solves that condition government must enforces participatory principle, rule of law/accountability, equal/non-discriminative, bigger consensus, public support that wider and result that suistainable that has bigger result.\(^\text{85}\) In that situation, to enforces and implements the principles above there are some

important recommendations for government who use those principles above such as: 86

- Make stronger and tight supervision to government institutions that has the duties and functions to protect rights of citizen such as human right or another rights;
- Develop the ability of government institution to discuss and deliberate in formulation decision through process that transparent which at the end will make respon of society will more effective and integrated in process of deliberation that decision and finally it will increase legitimacy of state institutions;
- Make stronger participatory in process of decision making which involve society and also consultation process with society at level national;
- Make stronger mechanism of taking the voice electively, free, active and full of meaning of that participation itself for society widely in process of formulation decision in level of local;
- Implementation of process of formulation decision by state institution to ensure that there is no discriminative and everything is equal in that process; and
- Facilitate limitation to produced by state institution and prevent occurrence of decreasing of norm that exist and applied in society during that crisis is going on.

According to development of society perspective widely about the term of good governance, according to them good governance is democratic governance

86 Ibid, p.284-285
where that term is also used by United Nation Development Programme, that basically to summarize the most fundamental principle in democracy where society are sued to regulate their self through a system that also choosen by them based on their will through process that open, transparency and participate.\textsuperscript{87} However in democratic governance society suppose to involve and give their opinion in process of formulation public policy that will impact and influence their life which the purpose of process at the end is to sue policy makers to can be accountable to policy that they formulated.\textsuperscript{88}

Democratic governance basically focus on participatory and accountability principle where political freedom for someone and ability to participate in public policy become fundamental human right for everyone so at the end democracy become political process that give guarantee freedom to citizens to participate in process of formulation decision.\textsuperscript{89} Therefore according to United Nation Development Programme in that development to support the effort of democratic governance one of them have to refer and focus on participation.\textsuperscript{90}

To support actualization of participation in state life, democracy must gives permission for each citizen to participate actively to give their voice in election that free and fair, to participate in administrative decision and support

\textsuperscript{88} \textit{Ibid}
\textsuperscript{89} \textit{Ibid}, p.16
\textsuperscript{90} \textit{Ibid}, p.17
their interest through political activity.\textsuperscript{91} Access of informations and communications in the process of decision becomes an important point to can actualize participation and finally public policy that produced will give impact for society life widely.\textsuperscript{92}

CHAPTER III
THE APPOINTMENT OF CONSTITUTIONAL COURT JUSTICE BY HOUSE OF REPRESENTATIVE (DPR), SUPREME COURT (MA) AND PRESIDENT

3.1 The Appointment of Constitutional Court Justice

Constitutional Court is a judiciary institution which has the function as constitutional enforcers that the decision is final. The provision that regulates about the duty and authority of the Constitutional Court as a judiciary institution in enforcement of the Constitution 1945 stated in Article 10 Paragraph (1) and (2) of Law Number 8 Year 2011 about Constitutional Court. In Article 10 Paragraph (1) of Law Number 8 Year 2011 about Constitutional Court, it mentions that:

“Mahkamah Konstitusi berwenang mengadili pada tingkat pertama dan terakhir yang putusannya bersifat final untuk:
   a. menguji undang-undang terhadap Undang-Undang Dasar Negara Republik Indonesia Tahun 1945;
   b. memutus sengketa kewenangan lembaga negara yang kewenangannya diberikan oleh Undang-Undang Dasar Negara Republik Indonesia Tahun 1945;
   c. memutus pembubaran partai politik; dan
   d. memutus perselisihan tentang hasil pemilihan umum”.

\textsuperscript{91} Ibid
\textsuperscript{92} Ibid
On the other hand in Article 10 Paragraph (2) of Law Number 8 Year 2011 about Constitutional Court, it mentions that:

“Mahkamah Konstitusi wajib memberikan putusan atas pendapat DPR bahwa Presiden dan/atau Wakil Presiden diduga telah melakukan pelanggaran hukum berupa pengkhianatan terhadap negara, korupsi, penyuapan, tindak pidana berat lainnya, atau perbuatan tercela, dan/atau tidak lagi memenuhi syarat sebagai Presiden dan/atau Wakil Presiden sebagaiman dimaksud dalam Undang-Undang Dasar Negara Republik Indonesia Tahun 1945”.

From those articles above, it can see that the Constitutional Court has the heavy duties as a judiciary institution in constitutional enforcement. There are two functions that are must held by the Constitutional Court such as the highest legal normative product those are regulative function and constitutive function. The first function is regulative function which has the meaning that the constitution becomes indicator, basic or reference for the legislation under the constitution that consist of fairness material or not. On the other hand the second function is constitutive function, it means that the constitution becomes an indicator to determine a basic of truth its existence from one regulation. So, it can be concluded that regulative function under in ethic: good-bad, fair-or not and across from that constitutive function exist in logic dimension: true-false, logic-or not.

Regarding regulation about the appointment of constitutional court justice which regulated in Article 24C Paragraph (3) of Constitution 1945 and Article 18 Paragraph (1) of Law Number 8 Year 2011 about Second Amendment of Law Number 24 Year 2003 about Constitutional Court. In Article 24C Paragraph (3) of Constitution 1945 it mentions that:

94. Ibid
95. Ibid
96. Ibid
“Mahkamah Konstitusi mempunyai sembilan orang anggota hakim konstitusi yang ditetapkan oleh Presiden, yang diajukan masing-masing tiga orang oleh Mahkamah Agung, tiga orang oleh Dewan Perwakilan Rakyat, dan tiga orang oleh Presiden”.

In Article 18 Paragraph (1) of Law Number 8 Year 2011 about Second Amendment of Law Number 24 Year 2003 about Constitutional Court it mentions that “Hakim Konstitusi diajukan masing-masing 3 (tiga) orang oleh Mahkamah Agung, 3 (tiga) orang oleh DPR, dan 3 (tiga) orang oleh Presiden, untuk ditetapkan dengan Keputusan Presiden”.

Basically there is no special regulation or law that regulate and explain clearly about how the process of recruitment, and the appointment of constitutional court justice by 3 (three) institutions that have authority to conduct the appointment process of constitutional court justice. In Law Number 8 Year 2011 about Second Amendment of Law Number 24 Year 2003 about Constitutional Court, it only explains and mentions that there are three institutions, those are House of Representative, President and Supreme Court who have authority to submit 3 (three) names of the constitutional court justice candidates from each institution which at the end the result of the appointment process of constitutional court justice is listed in Presidential Decree. To actualize public participation widely in the appointment process of constitutional court justice becomes a difficult thing to be implemented.\(^\text{97}\) To actualize public participation in the appointment process of constitutional court justice, it probably only implemented by House of

Representative because this institution is an institution that has the rule about selection of state official through fit and proper test.98

In regulation has mentioned before, those are Article 24C Paragraph (3) of Constitution 1945 and Article 18 Paragraph (1) of Law Number 8 Year 2011 about Second Amendment of Law Number 24 Year 2003 about Constitutional Court only mention about three institutions that have authority to submit the names of constitutional court justice candidates. But in the new regulation those are in Article 18A Paragraph (1) (2) (3) (4) (5) and (6) of Government Regulations In Lieu (Perppu) of Law Number 1 Year 2013 about second amendment of Law Number 24 Years 2003 about Constitutional Court it regulates more clear about the appointment procedure of constitutional court justice. In Article 18A Paragraph (1), (2), (3), (4), (5) and (6) of Government Regulations In Lieu of Law Number 1 Year 2013 about second amendment of Law Number 24 Years 2003 about Constitutional Court it mention that:

“Pasal 18A

(1) Hakim konstitusi sebagaimana dimaksud dalam Pasal 18 ayat (1) sebelum ditetapkan Presiden, terlebih dahulu harus melalui uji kelayakan dan kepatutan yang dilaksanakan oleh Panel Ahli.

(2) Mahkamah Agung, DPR, dan/atau Presiden mengajukan calon hakim konstitusi kepada Pannel Ahli masing-masing paling banyak 3 (tiga) kali dari jumlah hakim konstitusi yang dibutuhkan untuk dilakukan uji kelayakan dan kepatuhan.

(3) Panel Ahli menyampaikan calon hakim konstitusi yang dinyatakan lolos uji kelayakan dan kepatutan sebagaimana dimaksud pada ayat (2) sesuai dengan jumlah hakim konstitusi yang dibutuhkan ditambah 1 (satu) orang kepada Mahkamah Agung, DPR, dan/atau Presiden.

(4) Dalam hal calon hakim konstitusi yang dinyatakan lolos uji kelayakan dan kepatutan kurang dari jumlah hakim konstitusi yang dibutuhkan, Mahkamah Agung, DPR, dan/atau Presiden mengajukan kembali calon hakim konstitusi lainnya paling banyak 3 (tiga) kali dari jumlah hakim konstitusi yang masih dibutuhkan.

98 Ibid
(5) Dalam hal calon hakim konstitusi yang dinyatakan lolos uji kelayakan dan kepatutan sama dengan jumlah hakim konstitusi yang dibutuhkan, Mahkamah Agung, DPR, dan/atau Presiden dapat langsung mengajukannya kepada Presiden untuk ditetapkan, atau mengajukan tambahan paling banyak 3 (tiga) calon hakim konstitusi lainnya untuk diuji kelayakan dan kepatutan oleh Panel Ahli.

(6) Mahkamah Agung, DPR, dan/atau Presiden memilih hakim konstitusi sesuai jumlah yang dibutuhkan dari nama yang dinyatakan lolos uji kelayakan dan kepatutan oleh Panel Ahli, dan mengajukannya kepada Presiden untuk ditetapkan”.

If it reviewed in Government Regulation In Lieu of Law Number 1 Year 2013 about second amendment of Law Number 24 Years 2003 about Constitutional Court this new regulation regulate clearly about procedure of appointment of constitutional court justice that must be through the process of fit and proper test first so it possible to be able minimize the practice of Corruption, Collusion and Nepotism in the appointment process of constitutional court justice. Beside that in new regulations there are also expert panel who established by Komisi Yudisial, where this expert panel has a duty to test appropriateness and propriety of constitutional court justice candidate.

Besides that in new Government Regulation In Lieu of Law Number 1 Year 2013 about Second Amendment of Law Number 24 Years 2003 about Constitutional Court also regulate about establishmen of panel experts by Komisi Yudisial that also regulate in Article 18C Paragraph (1), (2), (3), (4) and (5). Panel experts who established by Komisi Yudisial consist of 7 (seven) people and must be fulfill the requirements to can be panel experts that regulated in Article 18C Paragraph (3) and the proposal and election of panel experts regulated in Article 18C Paragraph (2) which stated that

“Panel Ahli terdiri atas:
  a. 1 (satu) orang diusulkan oleh Mahkamah Agung;
  b. 1 (satu) orang diusulkan oleh DPR;
c. 1 (satu) orang diusulkan oleh Presiden; dan
d. 4 (empat) orang dipilih oleh Komisi Yudisial berdasarkan usulan
masyarakat yang terdiri atas mantan hakim konstitusi, tokoh masyarakat,
akademisi di bidang hukum, dan praktisi hukum”.

Regulation about the appointment procedures of constitutional court justice in
Government Regulation In Lieu of Law Number 1 Year 2013 about Second
Amendment of Law Number 24 Year 2003 About Constitutional Court not only
involve 3 (three) institutions such as stated in previous Law those are House of
Representative, Supreme Court and President, but in a new regulation about the
appointment procedure of constitutional court justice also involving Komisi
Yudisial so it hoped that the appointment process of constitutional court justice to
be more transparency and participative.

From both of those regulations which regulate about the appointment
procedure of constitutional court justice between the old regulation with new
regulation there are differences that clearly look from both of those regulations.
Those differences such as an additional of article on the new regulation, the
appointment of article that exist on the previous regulation, moreover there is also
article that added in new regulation. The difference between the new regulation
with the old regulation can be seen in this table below:

<table>
<thead>
<tr>
<th>Category</th>
<th>Article</th>
<th>Law Number 8 Year 2011</th>
<th>Government Regulation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Definition of expert panel</td>
<td>Article 1</td>
<td>There is no explanation about</td>
<td>There is additional explanation about</td>
</tr>
<tr>
<td>Requirements</td>
<td>Art 15</td>
<td>Panel expert</td>
<td>Panel expert</td>
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<td>constitutional</td>
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<tr>
<td>court justice</td>
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<td>Some of the</td>
<td>This additional points</td>
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<td></td>
<td></td>
<td>requirements</td>
<td>in Art 15 Paragraph (2) and</td>
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<td></td>
<td>provisions to be</td>
<td>(3) so its provision</td>
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<td></td>
<td></td>
<td>candidate of</td>
<td>become has doctor</td>
</tr>
<tr>
<td></td>
<td></td>
<td>constitutional</td>
<td>degree with a basic</td>
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<td></td>
<td></td>
<td>court justice</td>
<td>background as law education, has</td>
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<td></td>
<td></td>
<td>those are must</td>
<td>working experience</td>
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<td></td>
<td></td>
<td>has doctor and</td>
<td>in the field of law at</td>
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<td></td>
<td></td>
<td>magister degree that</td>
<td>least 15 (fifteen)</td>
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<td></td>
<td></td>
<td>background is law</td>
<td>years, not being a</td>
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<tr>
<td></td>
<td></td>
<td>education, and have</td>
<td>member of political</td>
</tr>
<tr>
<td></td>
<td></td>
<td>working experience</td>
<td>party in the period at</td>
</tr>
<tr>
<td></td>
<td></td>
<td>in the field of law</td>
<td>least 7 (seven) years</td>
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<tr>
<td></td>
<td></td>
<td>at least 15 (fifteen)</td>
<td>before submitted as</td>
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<td></td>
<td></td>
<td>years and/or ever be</td>
<td>constitutional court</td>
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<tr>
<td></td>
<td></td>
<td>state officials</td>
<td>justice candidate, and</td>
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<td>there is completeness</td>
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<td>additional</td>
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<td>administration that</td>
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<td>must be fulfilled by</td>
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<td></td>
<td></td>
<td>candidate of</td>
</tr>
</tbody>
</table>
The appointment of constitutional court justice through expert panel

| Article 18A, B, C | There is no Article 18A, 18B and 18C so constitutional court justice appointed by House of Representative, Supreme Court and President for 3 (three) persons for each institution and set into the Presidential Decree | There are additional of Article 18A, 18B and 18C so House of Representative, Supreme Court and President, each of them appoint the candidates of constitutional court justice to panel experts and panel experts will do fit and proper test for candidates of constitutional court justice and it will be set in a Presidential Decree, procedure of formation of panel |

constitutional court justice such as statements about not being a member of political party
| The appointment of constitutional court justice through expert panel | Article 20 | The provision about procedures of selection, election, and appointment of constitutional court justice regulated by each institution that has authority in appointing the candidate of constitutional court justice | Provisions about procedure of selection, election and appointment of the candidate of constitutional court justice regulated by each institutions that has authority in appointing the candidate of constitutional court justice but about the procedure of fit and proper test which implemented by panel experts regulated by Komisi Yudisial |
| Procedure of the appointment substitution of constitutional court through expert panel | Article 26 | The procedure of the appointment of a substitution for constitutional court justice also conducted by institutions that has authority in appointing the candidate of constitutional court justice those are House of Representative, Supreme Court and President. Besides that there is provisions of Paragraph (4) and (5) in Article 26 about the procedure of appointment of a substitution for constitutional court | The procedure of appointment of a substitution of constitutional court justice also through institution that has authority in appointing the candidate of constitutional court justice but procedure of that implementation still involving panel experts. The provision of Paragraph (4) and (5) in Article 26 was abolished |
| Ethic code and guideline constitutional court justice behaviour | Article 27A | This Article 27A consist of 7 paragraphs which is mainly contains about ethic code and guidelines of justice behaviour that created by Constitutional Court itself, the arrangement of Constitutional Court Justice Respection Assembly that consist of one person of each constitutional court justice, member of Komisi Yudisial, House of Representative, and government element in the field of law and judge of | This Article 27A consist of 14 paragraph which is mainly consist about ethic code and guidelines of judges behave that established by Constitutional Court, Komisi Yudisial and the another party who competent, besides that establishment of Constitutional Court Justice Respection Assembly also established by Constitutional Court with Komisi Yudisial that consist of one person from former judge of constitutional court, a |
Supreme Court. Besides that this article also regulate about the guidelines for Constitutional Court Justice Respection Assembly in implement their duties, procedure of trial and sanctions that given by Constitutional Court Justice Respection Assembly, the requirements to become the member of that Constitutional Court Justice Respection Assembly, the authority of Constitutional Court Justice Respection Assembly and procedure about trial by Constitutional Court Justice Respection Assembly and decision that issued by Constitutional Court Justice Respection Assembly.
<table>
<thead>
<tr>
<th><strong>Constitutional Court Justice Respection Assembly</strong></th>
<th>Article 87A</th>
<th>There is no provision of Article Pasal 87A</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>There is an additional provision of Article 87A about establishment of Constitutional Court Justice Respection Assembly based on Government Regulation In Lieu of Law Number 1 Year 2013</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Provision anout application of ethic code, guidline of justice behaviour, and establishment of expert panel and Constitutional Court Justice</strong></th>
<th>Article 87B</th>
<th>There is no provision of Article Pasal 87B</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>There is provisions of Article 87B about determination of Government Regulation Subtitution of Law, ethic code and guideline of justice behave that still applied after this Government Regulation In Lieu of</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
3.2 Government Regulation In Lieu of Law Number 1 Year 2013 about Constitutional Court and Annulment

On 2013 President issued Government Regulation in Lieu of Law Number 1 Year 2013 about Constitutional Court with purpose of that Government Regulation in Lieu to saved democracy society beliefs to the Constitutional Court as a judiciary institution that independent, clean and strong. A Government Regulation in Lieu was could be issued by President as the reason if there was a condition which force to issued that Government Regulation in Lieu. On 2013 the Constitutional Court faced a problem when one of the constitutional court justice involved in the corruption case. Automatically this problem also influenced society view about the decision that has produced by the Constitutional Court. Because of that reason, President argued that there was a condition which force to saved the Constitutional Court image as enforcer of Constitution and fixed about the system of the appointment the constitutional court justice.
In Government Regulation in Lieu of Law Number 1 Year 2013 about Constitutional Court, there are some new provisions about requirements of constitutional court justice which is stated in Article 15 Paragraph (1), (2) and (3) which mention that:

“Article 15:
(1) Hakim konstitusi harus memenuhi syarat sebagai berikut:
   a. memiliki integritas dan kepribadian yang tidak tercela;
   b. adil; dan
   c. negarawan yang menguasai konstitusi dan ketatanegaraan.

(2) Untuk dapat diangkat menjadi hakim konstitusi, selain harus memenuhi syarat sebagaimana dimaksud pada ayat (1), seorang calon hakim konstitusi harus memenuhi syarat:
   a. warga negara Indonesia;
   b. berijazah doktor dengan dasar sarjana yang berlatar belakang pendidikan tinggi hukum;
   c. bertakwa kepada Tuhan Yang Maha Esa dan berakhilak mulia;
   d. berusia paling rendah 47 (empat puluh tujuh) tahun dan paling tinggi 65 (enam puluh lima) tahun pada saat pengangkatan;
   e. mampu secara jasmani dan rohani dalam menjalankan tugas dan kewajiban;
   f. tidak pernah dijatuhi pidana penjara berdasarkan putusan pengadilan yang telah memperoleh kekuatan hukum tetap;
   g. tidak sedang dinyatakan pailit berdasarkan putusan pengadilan;
   h. mempunyai pengalaman kerja di bidang hukum paling sedikit 15 (lima belas) tahun; dan
   i. tidak menjadi anggota partai politik dalam jangka waktu paling singkat 7 (tujuh) tahun sebelum diajukan sebagai calon hakim konstitusi.

(3) Selain persyaratan sebagaimana dimaksud pada ayat (1) dan ayat (2) calon hakim konstitusi juga harus memenuhi kelengkapan administrasi dengan menyerahkan:
   a. surat pernyataan kesediaan untuk menjadi hakim konstitusi;
   b. daftar riwayat hidup;
   c. menyerahkan fotokopi ijazah yang telah dilegalisasi dengan menunjukkan ijazah asli;
   d. laporan daftar harta kekayaan serta sumber penghasilan calon yang disertai dengan dokumen pendukung yang sah dan telah mendapat pengesahan dari lembaga yang berwenang; dan
   e. nomor pokok wajib pajak (NPWP); dan
   f. surat pernyataan tidak menjadi anggota partai politik.”
Regarding the procedure of the appointment of constitutional court justice there is also new provision in Government Regulation in Lieu of Law Number 1 Year 2013 about Constitutional Court which is mentioned in Article 18A which state that:

“Article 18A

(1) Hakim konstitusi sebagaimana dimaksud dalam Pasal 18 ayat (1) sebelum ditetapkan Presiden, terlebih dahulu harus melalui uji kelayakan dan kepatutan yang dilaksanakan oleh Panel Ahli.(1) Hakim konstitusi sebagaimana dimaksud dalam Pasal 18 ayat (1) sebelum ditetapkan Presiden, terlebih dahulu harus melalui uji kelayakan dan kepatutan yang dilaksanakan oleh Panel Ahli.
(2) Mahkamah Agung, DPR, dan/atau Presiden mengajukan calon hakim konstitusi kepada Panel Ahli masing-masing paling banyak 3 (tiga) kali dari jumlah hakim konstitusi yang dibutuhkan untuk dilakukan uji kelayakan dan kepatutan.
(3) Panel Ahli menyampaikan calon hakim konstitusi yang dinyatakan lolos uji kelayakan dan kepatutan sebagaimana dimaksud pada ayat (2) sesuai dengan jumlah hakim konstitusi yang dibutuhkan ditambah 1 (satu) orang kepada Mahkamah Agung, DPR, dan/atau Presiden.
(4) Mahkamah Agung, DPR, dan/atau Presiden mengajukan calon hakim konstitusi kepada Panel Ahli masing-masing paling banyak 3 (tiga) kali dari jumlah hakim konstitusi yang dibutuhkan untuk dilakukan uji kelayakan dan kepatutan.
(5) Panel Ahli menyampaikan calon hakim konstitusi yang dinyatakan lolos uji kelayakan dan kepatutan sebagaimana dimaksud pada ayat (2) sesuai dengan jumlah hakim konstitusi yang dibutuhkan ditambah 1 (satu) orang kepada Mahkamah Agung, DPR, dan/atau Presiden.
(4) Dalam hal calon hakim konstitusi yang dinyatakan lolos uji kelayakan dan kepatutan kurang dari jumlah hakim konstitusi yang dibutuhkan, Mahkamah Agung, DPR, dan/atau Presiden mengajukan kembali calon hakim konstitusi lainnya paling banyak 3 (tiga) kali dari jumlah hakim konstitusi yang masih dibutuhkan.
(5) Dalam hal calon hakim konstitusi yang dinyatakan lolos uji kelayakan dan kepatutan sama dengan jumlah hakim konstitusi yang dibutuhkan, Mahkamah Agung, DPR, dan/atau Presiden dapat langsung mengajukannya kepada Presiden untuk ditetapkan, atau mengajukan tambahan paling banyak 3 (tiga) calon hakim konstitusi lainnya untuk diuji kelayakan dan kepatutan oleh Panel Ahli.”

In Government Regulation in Lieu of Law Number 1 Year 2013 about Constitutional Court, there is expert panel in the process of the appointment of constitutional court justice. So the process of the appointment not only is
conducted by three institutions those are President, House of Representative and Supreme Court but also involves expert panel in fit and proper test for the constitutional court justice candidates. The role of expert panel in the process of appointment is hoped can bring back beliefs of society and good image of the Constitutional Court. The procedure of appointment constitutional court which newer is better than the old one.

Although President issued Government Regulation in Lieu of Law Number 1 Year 2013 about Constitutional Court but that Government Regulation in Lieu of Law Number 1 Year 2013 about Constitutional Court was annulled by Constitutional Court on 13 February, 2014 in case Number 1-2/PUU-XII/2014. The reason why that Government Regulation in Lieu of Law Number 1 Year 2013 about Constitutional Court was annulled because the condition which force as the requirement of President to issued Government Regulation in Lieu was not fulfilled. Furthermore, the background of that Government Regulation in Lieu of Law Number 1 Year 2013 about Constitutional Court related to step that taken President to fix system and requirement of constitutional court justice assumed that less appropriate related with corruption case of one constitutional court justice. So from that consideration Government Regulation in Lieu of Law Number 1 Year 2013 about Constitutional Court but that Government Regulation in Lieu of Law Number 1 Year 2013 about Constitutional Court was annulled by Constitutional Court. Another reason why Government Regulation in Lieu of Law Number 1 Year 2013 about Constitutional Court was annulled by Constitutional Court was Komisi Yudisial is not an institution which has authority to supervise constitutional court justice.
CHAPTER IV
DATA AND ANALYZES

4.1 Interpretation of Transparency and Participatory Principles in the Appointment of Constitutional Court Justice in Administrative Court of Jakarta’s Verdict

In the appointment process of the constitutional court justice through President, House of Representative and Supreme Court, actually must refers and base on transparency and participatory principles. Basically in the process of appointment of constitutional court justice, principle of transparency refers to the meaning of openness where all the process of the appointment of constitutional court justice are must be implemented openly start from to announce the name of candidates of constitutional court justice, the process of selection which conducted for the
candidates of constitutional court justice until the last process, that is the announcement of the results from the selection process that has conducted are must be informed and published to the society. At the end society will know all of the informations about the quality of the constitutional court justice. In accordance with principle of transparency which refers to openness in the process of appointment of constitutional court justice, the principle of participatory has the meaning as society participation in the process of the appointment of constitutional court justice.

Relate to the process of the appointment of constitutional court justice where the implementation must based on transparency and participatory principles, so the thing that becomes the main problem in this research is about the lawsuit of Presidential Decree Number 87/P/2013 about the appointment of constitutional court justice. In Administrative Court, basically review that conducted by judge in one case which has registered in the Administrative Court for example is a case that relate to license or staffing such as the appointment of constitutional court justice, this review base on two things, those are legislation that exist and applied and the principles of good governance.

The parties who submitted the lawsuit who were also known as plaintiffs are the public organization, those are Yayasan Lembaga Bantuan Hukum Indonesia (YLBHI) dan Indonesia Corruption Watch (ICW) where their interests to submitted the lawsuit was to fight for the rights of society to participate in the process of the appointment of constitutional court justice. An important issue that becomes the main lawsuit of plaintiffs in the Administrative Court case Number 139/G/PTUN-JKT/2013 or the object of lawsuit was Presidential Decree Number
87/P/2013 on July 22, 2013 about the appointment of constitutional court justice on behalf Patrialis Akbar which was not based on the principles of Good Governance, those were transparency and participatory principles. The reason of plaintiffs to submitted the lawsuit was on 2008 in the appointment process of constitutional court justice in that period involved the role of the parties to participated in the appointment process of constitutional court justice.

Actually the appointment process of constitutional court justice that conducted on 2008 also involve various parties to give their input to the candidate of constitutional court justice who choosen, so the rights of society to participate in the appointment process of constitutional court justice has been implemented well based on participatory principle. Moreover on 2008, the appointment process of constitutional court justice also implemented well the transparency principle. This was reflected in the process of publication and the information was provided by the committee during the selection process of the candidates of constitutional court justice on 2008. Therefore, because there were different process which implemented on 2008 and 2013, the plaintiffs submitted a lawsuit.

In article 19 of Law Number 8 Year 2011 about Second Amendment of Law Number 24 Year 2003 about Constitutional Court regulate about implementation of the appointment process of constitutional court justice that must base on transparency and participatory principles which is stated that “Pencalonan hakim konstitusi dilaksanakan secara transparan dan partisipatif”. In explanation of Article 19 Law Number 8 Year 2011 about Second Amendment of Law Number 24 year 2003 about Constitutional Court, it explains about the meaning of the process of transparency and participatory such as publication which is conducted
in mass media both of in print and electronic about the candidates of constitutional court justice because society must have opportunity to give their input and advice to the candidate of constitutional court justice, so finally the appointment process of constitutional court justice will reflect transparency and participatory principles.

There are two things which become the basic for an Administrative Decision that can be sued in the Administrative Court. The first basic is the Administrative Decision violates legislation that applied and the second is the Administrative Decision violates the principles of good governance. If it related to the object of dispute, the Presidential Decree Number 87/P/2013 on July 22, 2013 about the appointment of constitutional court justice which violates legislation, according to plaintiffs the object of dispute not only violated the Article 15, 19 and 20 of Law Number Number 8 Year 2011 about Second Amendment of Law Number 24 year 2003 about Constitutional Court that delegates to fullfiled the administrative requirements and the appointment process of constitutional court justice which implemented base on transparency and participatory principles where each articles state that:

Pasal 15:
(1) Hakim konstitusi harus memenuhi syarat sebagai berikut:
   a. Memiliki integritas dan kepribadian yang tidak tercela;
   b. Adil; dan
   c. Negarawan yang menguasai konstitusi dan ketatanegaraan.
(2) Untuk dapat diangkat menjadi hakim konstitusi, selain harus memenuhi syarat sebagaimana dimaksud pada ayat (1), seorang calon hakim konstitusi harus memenuhi syarat:
   a. Warga negara Indonesia;
   b. Berijazah dokter dan magister dengan dasar sarjana yang berlatar belakang pendidikan tinggi hukum;
   c. Betakwa kepada Tuhan Yang Maha Esa dan berakhlak mulia;
   d. Berusi paling rendah 47 (empat puluh tujuh) tahun dan paling tinggi 65 (enam puluh lima) tahun pada saat pengangkatan;
e. Mampu secara jasmani dan rohani dalam menjalankan tugas dan kewajiban;
f. Tidak pernah dijatuhi pidana penjara berdasarkan putusan pengadilan yang telah memperoleh kekuatan hukum tetap;
g. Tidak sedang diyatakan pailit berdasarkan putusan pengadilan; dan
h. Mempunyai pengalaman kerja di bidang hukum paling sedikit 15 (lima belas) tahun dan/atau pernah menjadi pejabat negara

(3) Selain persyaratan sebagaimana dimaksud pada ayat (1) dan ayat (2) calon hakim konstitusi juga harus memenuhi kelengkapan administrasi dengan menyerahkan:
a. Surat pernyataan kesediaan untuk menjadi hakim konstitusi;
b. Daftar riwayat hidup;
c. Menyerahkan fotokopy ijazah yang telah dilegalisasi dengan menunjukan ijazah asli;
d. Laporan daftar harta kekayaan serta sumber penghasilan calon yang disertai dengan dokumen pendukung yang sah dan telah mendapat pengesahan dari lembaga yang berwenang; dan
e. Nomor Pokok Wajib Pajak (NPWP)

Pasal 19:
Pencalonan hakim konstitusi dilaksanakan secara transparan dan partisipatif.

Pasal 20:
(1) Ketentuan mengenai tata cara seleksi, pemilihan dan pengajuan hakim konstitusi diatur oleh masing-masing lembaga yang berwenang sebagaimana dimaksud dalam Pasal 18 ayat (1).
(2) Pemilihan hakim konstitusi sebagaimana dimaksud pada ayat (1) dilaksanakan secara obyektif dan akuntabel.

On the other hand, Presidential Decree Number 87/P Yaer 2013 also violate with Article 3 of Law Number 28 Year 1999 about State Implementation which Clean and Free From KKN which stated that:

Pasal 3:
Asas-asas Umum penyelenggaraan negara meliputi :
1. Asas Kepastian Hukum;
2. Asas Tertib Penyelenggaraan Negara;
3. Asas Kepentingan Umum;
4. Asas Keterbukaan;
5. Asas Proporsionalitas;
6. Asas Profesionalitas, dan
7. Asas Akuntabilitas.

Moreover, according to plaintiffs beside it violated legislation that exist and applied, Presidential Decree Number 87/P/2013 also violated the principles of
good governance. According to plaintiff, the principles of good governance which were violated by President to issued the Presidential Decree Number 87/P/2013 consist of legal certainty principle, public interest principle, accountability principle and transparency principle. The meaning of legal certainty principle is a principle which is implemented in a state law to make and implement legislation which is applied as a foundation for government in all things and processes that relate to public policy for society interests widely.

While the meaning of public interest principle is a principle which must be concerned to the public interests and welfare through aspirational in every process and activity of state implementation or in other words in every process and activities of the state implementation, society have to participate in that process. Furthermore, the meaning of accountability principle is a principle that demands every state government have to be responsible in every process and activities of state implementation for society. And the meaning of transparency principle is a principle that demands every state government to provides and gives all informations that related to every process of state implementation activities as basic rights which are have to obtained by society, or in other words according to this transparency principle, government demanded to act transparently in the state implementation activities.

From all of proposition that become the reason of plaintiffs to submitted a lawsuit to the Administrative Court of Jakarta such as the things that have been described above, and then Administrative Court of Jakarta’s justices in case Number 139/G/2013/PTUN-JKT gave their consideration to the propositions of the lawsuit from plaintiffs. There are two mechanisms that conducted in the
process of the appointment of constitutional court justice. Both of those mechanism consists of the administrative requirements, it means that all of requirements or criteria that are must be fulfilled by a candidate of constitutional court justice which state in Article 15 and 17 of Law number 8 Year 2011 about Second Amendment of Law Number 24 Year 2003 about Constitutional Court and the procedures that have to be conducted transparently and participatively which state in Article 18, 19 and 20 of Law Number 8 Year 2011 about Second Amendment of Law Number 24 Year 2003 about Constitutional Court.

In practice that occur during this time in the process of the appointment of constitutional court justice, mechanism that is used by each institution which has authority, those are House of Representative (DPR), Supreme Court (MA), and President to submit the name of constitutional court justice candidates and select constitutional court justice are conducted and implemented base on procedures and policy of each institutions which has that authority. There is no detail explanation in Law Number 8 Year 2011 about Second Amendment of Law Number 24 Year 2003 about Constitutional Court which regulate clearly and forcefully about how the procedures in the selection and appointment process of constitutional court justice. So at the end it cause difference in policy which is conducted by each institution that has authority in the appointment of constitutional court justice, and it cause implementation of the selection and appointment process of constitutional court justice which is not base on and implement transparency and participatory principles where involve society or institution or society organization in that process. In three periods of the appointment of constitutional court justice by President those were in the first
period on 2003-2008, the third period on 2010 and the fourth period on 2013, the selection process of constitutional court justice was conducted through the way the appointment directly by President.

Overall, from those four periods of the appointment constitutional court justice, just one period that was the second period where the process of appointment constitutional court justice was implemented base on transparency and participatory principles in accordance with legislation that applied and principles of good governance. According to the Administrative Court of Jakarta’s justice, to actualize an administrative decision which accountable or can be accounted in the process of that administrative decision must base on transparency principle. In accordance to actualize an administrative decision which objective, it also must base on participatory principle. From the appointment process of constitutional court justice that has been conducted by President during four periods, not all of those processes in that period reflected the implementation of transparency and participation principles because the process that conducted by President was appointment directly.

From interview that has been conducted to the Head of Justice of Administrative Court of Jakarta in case Number 139/G/2013/PTUN-JKT, Teguh Satya Bhakti, SH.,MH, he gave his view and opinion that basically in earlier there were similar cases such as case Number 139/G/2013/PTUN-JKT that was occurred in the Administrative Court, because basically those cases were cases that related to the appointment of public official. Similar cases that have ever occurred in the Administrative Court were such as the appointment of Gubener by President. Similar with the case Number 139/G/2013/PTUN-JKT, where the
object of dispute was Presidential Decree, there were two things that become important points and issues in that lawsuit which related to the problem of the appointment of public official those were about procedural and mechanisms of the appointment process of public official, whether the appointment process which conducted was right or in accordance with law that applied. On the other hand that became the second important points and issues were about the substance that related to material or contents of that administrative decision.

He argued that the meaning of principle of transparency is one part of principle in the system of democracy where transparency has the meaning as the right of citizen to know about public policy of public official, in this context that was conducted by President in the appointment of constitutional court justice. He also argued that in a state that embraced the principle of transparency, society in that state have to know all the things that relate to the appointment of constitutional court justice and also besides that society also need to be involved to can give input or opinion by judging of character and record of the candidate constitutional court justice because that can give a judgment is public or society itself. Beside that he argue that in the appointment of constitutional court justice that related society widely, there must society participation in a state that embrace democratic system while besides have to implement principle of participation, that public official also must be transparent to their policy or decision that suppose to be taken because to occupy one that public official position related with interest of many people. He argue that simply, transparency can be said as a consequence of our state which embrace principle of democracy, so transparency must be
conducted by public officials that related and involving public participation of society.

On the other hand, according to him appointment of constitutional court justice that stated in Presidential Decree Number 87/P/2013 did not reflect transparency and participation principles in process of appointment of constitutional court justice. The evidence of there is no implementation of transparency and participation principles in that Presidential Decree Number 87/P/2013 on appointment of constitutional court justice is there is lawsuit from Plaintiffs. There are several factors are become basic of thinking of Mr. Teguh Satya Bhakti, SH.,MH, personally in decided to receive lawsuit of Plaintiffs in the case Number 139/G/2013/PTUN-JKT such as that those propositions of Plaintiffs are proven and reasonable according to law so that proves that appointment of constitutional court justice of defective procedure, it means that appointment of constitutional court justice is not involving public participation and violate transparency principle.

Furthermore he argued that evidence of violation of transparency principle is there is constitutional court justice who appointed suddenly. In his opinion he said that in the beginning period of establishment of Constitutional Court in 2003, society unconcerned about that problem, it can be seen from constitutional court justice in the first period derived from those people who be a role model on legal field. After that in period or the next generation then there is development that can be proved from there is judgment from each organization that has authority in process of appointment constitutional court justice. So the consequences and effects from that decisions in the first level of Administrative Court about the
appointment process of constitutional court justice become more transparent and participate, it can be seen from there is participation of society such as there is opinion of society and social organization which implemented by DPR through Plaintiffs but on the other hand appointment constitutional court justice which conducted by Supreme Court and President still are closed or not transparent and participate.

Therefore he said that mechanisms of appointment constitutional court justice through President, House of Representative and Supreme Court must through same mechanism and must be implement transparency and participation principles because Constitutional Court is a single institution where some of experts said that Constitutional Court like half of God because of decision that produced is final and binding so normatively there is no legal effort to appeal, cassation or judicial review to Constitutional Court decision. So if there is an element that related to Corruption, Collusion and Nepotism in the constitutional court decisions, it will make worse and unfair as result from the constitutional court decisions. However in the appointment of constitutional court justice must implement well transparency and participatory principles such as involve the role of society or society organization as observers of law and there is mechanism of announcements in mass media both print and electronic or in government website about appointment constitutional court justice or at least invite academics or society leaders who their existence recognized in society so that thing may prevent the possibility of political interests from institution that related because power of Constitutional Court which extraordinary.
According to data that obtained from decision of Administrative Court Number 139/G/2013/PTUN-JKT and from result of interview to the Head of Justice of Administrative Court of Jakarta in case number 139/G/2013/PTUN-JKT, Mr. Teguh Satya Bhakti, SH.,MH, transparent has the meaning of openness. The meaning of openness in here is all process of appointment of constitutional court justice which implemented by President, must be known thoroughly by society widely where that thing actualized from announce name of candidate of constitutional court justice, requirements to be constitutional court justice, quality and record of each candidate constitutional court justice until the procedure of appointment that conducted by institutions that has authority in appointment of constitutional court justice those are President, House of Representative and Supreme Court that at the end results which obtained from selection process also should be informed to society widely where that policy will give impact for life of all citizens of Indonesia.

In other word the meaning of participatory is process of formulation of a administrative decision by President which involving participation of society in the appointment process of constitutional court justice. The form of participation which suppose to be conducted by President in process of appointment of constitutional court justice is there is involvment of society or organizations of society in giving their judgment and opinion to the candidate constitutional court justice so the judgment that conducted also objective that at the end aimed to interest in general and broad not for interests of certain groups. In process of appointment of constitutional court justice through President, House of Representative and Supreme Court have to implement transparency and
participatory principles as a result and reflection of a democratic system that adopted and embraced by Indonesia. Transparency and participatory principles also include into indicators to measure whether a state already implement the principles of good governance or not yet.

The basis of the lawsuit of plaintiffs was because there was no implementation of transparency and participatory principles in the appointment process of constitutional court justice which was conducted by President. Basically the reason of the lawsuit was submitted to Administrative Court of Jakarta was because that administrative decision violated two things those were the first one that related with legislation that applied and the second were violated the principles of good governance. In this thing it can be viewed clearly that to issued Presidential Decree Number 87/P/2013, besides violate some articles that stated in Law about Constitutional Court especially Article 18, 19 and 20 of Law Number 8 Year 2011 about Second Amendments of Law Number 24 Year 2003 about Constitutional Court, Presidential Decree Number 87/P/2013 also violated principles in good governance those are principle of transparency and participatory that can viewed clearly.

Actually, the appointment process of constitutional court justice supposes to become very important thing to implement transparency and participation principles as reflection and efforts to actualize good governance. In this case concerning one of the highest institution in Indonesia, that is Constitutional Court where from the duties and powers which is hold by constitutional court justice relate to the Constitution of 1945 that becomes the basic constitution of Indonesia. Decision that produced by Constitutional Court is final and binding so the
decision that produced also have to base on and gives priority to fairness. So opinion that stated by Mr. Teguh Satya Bhakti, SH.,MH as the head of justice of Administrative Court of Jakarta in case Number 139/G/2013/PTUN-JKT was right, that in the Presidential Decree Number 87/P/2013 transparency and participatory principles was not reflected and implemented well. From legal consideration that stated by justice of Administrative Court of Jakarta in the case Number 139/G/2013/PTUN-JKT, that stated in decision Number 139/G/2013/PTUN-JKT was right to assessed and viewed the violation of Law about Constitutional Court and transparency and participatory principles.

The process of recruitment constitutional court justice which conducted by three institutions that has authority in the appointment of constitutional court justice closed before the plaintiffs submitted a lawsuit to Administrative Court of Jakarta. The candidate of constitutional court justice which was appointed by each institution that authorized in recruitment of the constitutional court justice candidate until how process that was conducted by each institutions in the recruitment and appointment of constitutional court justice candidate were not informed transparently. After there is a lawsuit that submitted and to coincide with the problems that occurs and involve one of constitutional court justice, so the process of appointment becomes more open through establishment of panel experts that involve Komisi Yudisial and public figures where the process of appointment which newer and more open also has regulated more detail in Government Regulation in Lieu of Law Number 1 Year 2013 about Constitutional Court.
Through the process of recruitment and selection that newer which stated in Government Regulation in Lieu of Law Number 1 Year 2013 about Second Amendment of Law Number 24 Year 2003 about Constitutional Court, the appointment process of constitutional court justice is more opens and reflects transparency and participatory principles so public or society can plays their role and their right to participate in that process. Implementation of Government Regulation in Lieu of Law Number 1 Year 2013 about Second Amendment of Law Number 24 Year 2003 about Constitutional Court which stated that the appointment of constitutional court justice base on transparency and participatory principles has implemented lately.

Reflection of implementation of transparency and participatory principles can see through there is transparent from President about names of candidate constitutional court justice, time of implementation, procedure of selection that conduct until schedule which conducted by candidate of constitutional court justice such as interview and and test of health. All of informations about implementation of selection process of constitutional court justice publiced by President in mass media or electronic and it reflect transparency principle. In accordance with reflection of transparency principle in appointment of constitutional court lately, participatory principle also implemented and moreover there is participation of society in that process.

Evidence of reflection in implementation of participatory principle also can looked through opportunity that given by President to participate in interview which conducted by candidate constitutional court justice. Participation which conducted is citizen has opportunity to give the question to candidate
constitutional court justice. So citizen can use their right to participate in selection process. If it observed there is development which better about appointment constitutional court justice. The positive development which occurs is reflected form implementation of transparency and participation principles. In addition development that occurs also from the role of expert panel to supervises of the selection process. Finally it becomes better lately in the appointment of constitutional court justice.

4.2 The Interpretation of Administrative Court of Jakarta and the High Court of Administrative of Jakarta about legal standing of plaintiffs as a right of an organization to sue in decision of the appointment of constitutional court justice Number 87/P Year 2013

Basically every citizen of Indonesia either individually, group or in the form of union which has already joined in a legal entity that has a right to filed a lawsuit to judiciary in Indonesia. Although every citizen, group or legal entity are able to use their right to submit a lawsuit to the judiciary in Indonesia, but there are still requirements that have to fulfilled by a person or group of person who acts as a Plaintiff to filed a lawsuit to judiciary in Indonesia. One of the requirements that must be fulfilled by Plaintiff to submit their lawsuit to judiciary in Indonesia is there is interest or loss in material or immaterial which suffered by Plaintiff. There are some kinds of rights that can used by Plaintiffs to file their lawsuit to judiciary in Indonesia such as right of organization to sue, representative lawsuit or class action and citizen lawsuit.

One of right to sue that will be talked here is about right of organization to sue. In general right of organization to sue usually used as legal standing for Plaintiff
in the case which relate to environmental problems. It stated in Article 92 Paragraph (1) of Law Number 32 Year 2009 about Protection and Management of Environmental which stated that “Dalam rangka pelaksanaan tanggung jawab perlindungan dan pengelolaan lingkungan hidup, organisasi linkungan hidup berhak mengajukan gugatan untuk kepentingan pelestarian fungsi lingkungan hidup”. But in accordance with time passes and the development that occur, right of organization to sue not only applied in issues that related with environment but also applied in outside of issues which related to environment during there is interest or losses which suffered by Plaintiff.

In lawsuit which the object of case is the Presidential Decree Number 87/P Year 2013 about Appointment of Constitutional Court Justice, Plaintiffs use the right of organization to sue as their legal standing to filed lawsuit to Administration Court. Although there was a conflict that occurred in interpretation of right of organization to sue as legal standing of plaintiffs between Administrative Court of Jakarta’s justice and High Court of Administrative of Jakarta’s justice. Plaintiffs itself consists of Yayasan Lembaga Bantuan Hukum Indonesia (YLBHI) and Indonesia Corruption Watch (ICW) which base on their Basic Budget and/or Household Budget (AD/ART) they are two of legal entities that valid which have function to monitor the performance of judiciary, legal reforms, anti-corruption activities, fight for Constitution and human rights. So based on that reason that Plaintiff said right of organization to sue and their interest to file a lawsuit to Administrative Court on object of the case is Presidential Decree Number 87/P Year 2013 about Appointment of Constitutional Court Justice.
However in court hearing that occurred in exception which were delivered by defendant and defendant II intervention, said that plaintiffs have no legal standing to submitted a lawsuit, moreover defendant and defendant II intervention also stated that plaintiffs have no interest for sue (Persona Standi in Judicio) so there was contradiction in the thing of legal standing and interests of plaintiffs. According to Article 53 Paragraph (1) of Law Number 9 Year 2004 about Second Amendment of Law Number 5 Year 1986 about Administrative Court, which state that:

“Orang atau badan hukum perdata yang merasa kepentingannya dirugikan oleh suatu Keputusan Tata Usaha Negara dapat mengajukan gugatan tertulis kepada pengadilan yang berwenang yang berisi tuntutan agar Keputusan Tata Usaha Negara yang disengketakan itu dinyatakan batal atau tidak sah, dengan atau tanpa disertai tuntutan ganti rugi dan/atau direhabilitasi”.

In Administrative Court of Jakarta’s verdict, the justices argued that in accordance with developments that occur in practice of Administrative Court that the provisions of Article 53 Paragraph (1) of Law Number 51 Year 2009 on Second Amendment of Law Number 5 Year 1986 about Administrative Court was not applied absolutely related with there is recognition of right of person or certain institution to submit a lawsuit, include in it a lawsuit which representative public interest as right of organization to sue but still have to fulfil some requirements to submit a lawsuit to Administrative Court. Beside that there are jurisprudence in Administrative Court about lawsuit who represent public interest that is in decision of Administrative Court of Jakarta Number 088/G/PTUN-JKT that be used as reference of jurisprudence by judges of Administrative Court to receive right of organization to sue as legal standing of Plaintiff.
Refer to jurisprudence, the judges in Administrative Court also argued in their decision that what is the meaning of a group that representative public interest is member of society who joined in an organization that has purpose to care of and fight for a specific purpose of that organization where that purpose state in basic budget of that organization furthermore there are also several requirements that must be fulfilled to submit a lawsuit trough right of organization to sue such as purpose of organization which stated in basic budget of that organization, that organization is a legal entity or foundation, there is connection which showed that organisation is care and explicitly and clearly has proved their concern in society and of that organizations must be representative. So based on of that jurisprudence it become the reason and basis for Administrative Court to receive legal standing of the plaintiffs.

On the other side not only about the right of organization to sue that develops over time but also understanding of word interest itself also develop from time to time through jurisprudence and doctrine. Essentially in line with its development in jurisprudence and doctrine, the word of interest have two meanings, first interest defined as value or quality which receive legal protection and second interest defined as a goal that will achieved by the process. So in the end there is the expansion of meaning of interest in practice of Administrative Courts where a lawsuit can be filed with the reasons for interest of many people or interests society widely. Because of the reason there is jurisprudence and development of expansion of rights of organization to sue and the meaning of interest, so Administrative Court of Jakarta justice was granted lawsuit of the plaintiffs.
In interview which had conducted to the head of Administrative Court of Jakarta’s justice in case Number 139/G/2013/PTUN-JKT, Mr. Teguh Satya Bhakti, SH.,MH, he gave his opinion that the meaning of interests which stated in Article 53 Paragraph (1) of Law Number 51 Year 2009 about Second Amendment of Law Number 5 Years 1986 about Administrative Court, the phrase of interest that stated in that article normatively is abstract. In the development of judicial on practice, it has been the Jurisprudence that expanded the meaning of interests. Jurisprudence is one of the sources of law. Jurisprudence about that interest itself, such as in case that involve between Walhi against President related to President Decision about reforestation fund that assumed have been abuse in that funds where in that case Plaintiff use right of organization to sue as their legal standing, He gave his view that actually the meaning of interest that actually related with right of organization to sue as legal standing not only described in Law or Legislation but also in Jurisprudence about rights of organization to sue have been given position in judiciary especially in Administrative Court. Furthermore an organization of society was seen as a representation of community as observers of law. Therefore as a result of consequences of our state who embrace principle of democracy, so organizations of society also develop. In accordance with development of organizations of society that occurs, legislation that exist in our state just conservative so in this situation judge have to play their role in doing legal finding so that developments capable accommodated when there is contradiction about interpretation from the meaning of interest.

On the other hand about right of organization to sue that used as basis of legal standing for Plaintiffs to filed their lawsuit, he also argue that right of organization
to sue not only can applied limited in case or issue that related with environment. In fact basically regulation about right of organization to sue has been regulated in our legislation although it’s regulation is not yet integrated into one and distributed at various certain issues such as in law of environmental, law of forestry and another laws. It means that although regulation about right of organization to sue has not been integrated into one but that right of organization to sue has been started to recognized and not limit only on environmental issue. Furthermore he argues that Constitutional Court has been recognized about right of organization to sue.

Moreover he also give the reason about his view to extend right of organization to sue that previously only applied in the case of that related with environmental because there is development that occur such as development of the issue that occurred in practice of Administrative Court which was originally only relate with environmental issue and now become widely related to social political that related to culture so the development must be able to accommodated so we are left behind because normatively our legislation are not able to accommodate this thing but empirically such as in Constitutional Court decision which final and binding has been already recognize about that rights organization to sue. However there are some requirements that have to fulfilled by organization of society to be able to filed a lawsuit through the right of organization to sue such as have to as legal entity, in AD/ART of that organisation have to regulate about thing that become main thing of lawsuit and consistent in fight for AD/ART of that organization and there is existence or public recognition about that organisations. So that thing has probability to avoid any organization of society which is only representative on
interest of individual or some group that may be has become a problem as a result of the expansion right of organization to sue. Automatically right of organization to sue can be recognized as legal standing from a society organization if those requirements fulfilled by the society organizations. According to him that he individually use methods of interpretation extensive methods of interpretation to interpretate right of organization to sue in case Number 139/G/2013/PTUN-JKT where that methods of interpretation used with to extend the meaning of right of organization to sue as legal standing for Plaintiffs as society organizations in the fields of law and politic.

On the basis of the reason that lawsuit of Plaintiffs received by Administrative Courts, then the Defendant and Defendant II Intervention filed memory of appeal to High Court of Administrative Court. Across and different with opinions which argued by judges of Administrative Court, judges at High Court of Administrative Court has different views about legal standing for Plaintiffs. In memory of appeals that filed by Defendant, they stated that there is a mistake of interpretation and application of jurisprudence which conduct by judges in Administrative Court about right of organization to sue as legal standing of Plaintiff. In legal consideration at the level of appeal in decision of High Court of Administrative Court, judges in High Court of Administrative Court argue that based on Article 53 Paragraph (1) of Law Number 9 Year 2004 about Amendments of Law Number 5 Year 1986 about Administrative Court the thing that can be said as Plaintiff is a person or legal entity who felt their interests damaged by the Administrative Decision.
Based on Article 11 of Law Number 16 Year 2001 j.o Law Number 28 Year 2004 about Foundation that legal status of the foundation acquired after the establishment deed of foundation endorsed by Minister law and HAM so based on evidence which filed in court hearing in Administrative Courts such as Letters of Decision of Minister of Law and HAM of Indonesia Number AHU-7352AH.01.04 Year 2011 about ratification of the foundation so Plaintiff in this context is Yayasan Lembaga Bantuan Hukum Indonesia already fulfil the requirements as civil legal entity. In addition another Plaintiff in this case is Indonesia Corruption Watch is an organization which established based on a Notarial deed Number 53 on June 11, 2009 and has been registered in General Court of South Jakarta on August 31, 2001 which in accordance with evidence that has been filed in court hearing in Administrative Court, so according to transitional rules which stated in Article 83 of Law Number 23 Year 2013 about APBN so that organization recognition as civil legal entity.

According to High Court of Administrative Court of Jakarta justices both of Plaintiff I and Plaintiff II already fulfil the requirement as civil legal entity. About interest of Plaintiffs, the judges in High Court of Administrative Court use theory of Indroharto S.H in his book titled “Usaha Memahami Undang-Undang tentang Peradilan TUN” in book II on page 37-40 which in essence said that the meaning of interest in scope of Administrative Court contain two meanings. The first meaning are refer to the value that must be protected by law. It means that to be called or said as has an interest to filed a lawsuit so that interest should be individual (eigen belang) where that interest is individual interest (personelijk belang) which objectively that interest can be assessed and determined. While the
second meaning of interest is that interest refers to the administrative decision itself which is issued by State Official so that interest should be directly suffered by that person.

In addition to assess and measuring understanding of that interest, judges in High Court of Administrative Court also used the principle of “poin d’interet poin d’action” which means that in filed a lawsuit scope of Administration Court it must be accompanied by the purpose that want to be achieved because without the purpose that want to be achieved so that lawsuit will not bring the benefits for interest in generally but only disrupt the process of government that is running. So based on theory that used judges of High Court of Administrative Court, so they think that interest of Plaintiff in submit a lawsuit to Administrative Court only based on legal interests to fight for their rights that exist in each of AD/ART of those organizations as Plaintiffs So in the end judges in High Court of Administrative Court considered that Plaintiffs did not fulfil the requirements to filed a lawsuit where that interest of Plaintiffs is the interests of Plaintiffs itself which is not individual and personal.

According to judges of High Court of Administrative of Jakarta also said that beside interests of Plaintiffs to sue not personal, interests of plaintiffs also did not suffered by Plaintiffs directly and losses which was suffered by plaintiffs were also cannot be determined objectively in. About the right of organization to sue which used by plaintiff as legal standing of Plaintiffs, judges in High Court of Administrative of Jakarta also assessed and argued that the use of Law Number 32 Year 2009 about Protection and Management of Environmental, Law Number 41 Year 1999 about Forestry and Law Number 48 Year 1999 by Plaintiffs as legal
basis for Plaintiffs to use their right of organization as legal standing of Plaintiffs is not be used by Plaintiff because according to judges of High Court of Administrative Court, articles in that law regulate about right of organization to sue it possible only apply specifically on scope of protection and management of environmental, scope of protection of forest and consumer protection.

Judges in High Court of Administrative of Jakarta also argued that right of organization to sue as legal standing of Plaintiffs can only be used in condition if Law Number 8 Year 2011 about Constitutional Court regulate and determine rights of organization to sue as legal standing of Plaintiffs especially in this case Plaintiffs are organization to filed a lawsuit. Therefore if in Law Number 8 Year 2011 about Constitutional Court itself is not to determine and regulate about right of organizations to sue, so Plaintiffs cannot use rights of organization to sue as their legal standing of Plaintiffs in filed a lawsuit to Administrative Courts. So in the end the judges in High Court of Administrative of Jakarta decided that the plaintiffs have no interest to submited a lawsuit to Administrative Courts so in that appeal decisions in High Court of Administrative of Jakarta, judges cancelled the decision of Administrative Court of Jakarta Number 139/G/PTUN-JKT.

From data that already obtained from decision of Administrative Courts Number 139/G/PTUN-JKT, decision of High of Administrative Courts Number 55/B/2014/PT.TUN.JKT and interview to Head of Judges case Number 139/G/PTUN-JKT in Administrative Courts of Jakarta Mr. Teguh Satya Bhakti, SH.,MH so description about interests is something that related with purpose or something that needed or required of a person or civil legal entity that can be associated with a loss such as real loss or material loss. There are two kinds of
way of to assess an interest for a person or civil legal entity. The first is assess interests directly and second that assess interest indirectly. In the case about a lawsuit which filed by Plaintiffs about Presidential Decree Number 87/P/2013 as an object of case, interests which is owned by Plaintiffs in filed a lawsuit to Administrative Courts is indirectly interest which suffered by Plaintiffs.

However interest which is owned by Plaintiff is not always must be interests which is directly interest. In some particular thing such as in case of appointment of constitutional court justice like this, interests which suffered not only as interest which suffered directly. Why did i mention that should not be of interest which suffered directly because in appointment of constitutional court justice basically can be said that party which essentially affected directly as if there is violation of procedure which conduct by public official in process of candidacy, selection and appointment of constitutional court justice is society widely that is all Indonesian people where this thing related with the right of people to give their opinion so organization of society is an association of society as legal observer and fight for right of society where the nature of the organization of society itself is representative and indirectly affected by the impact of Administrative Decision so in this situation according to me interest to filed lawsuit is not always should be valued as direct interests that the impact also suffered directly by the party who will filed a lawsuit.

But if only use of of right of organization to sue as legal standing of society organization only used in case that related with environmental issue, then how about another legal problem such as problem that relating to removal of public official like this? Therefore legal consideration and steps was taken by judges on
Administrative Court to extend the meaning of right of organization to sue is a right steps that conducted by judges. It cannot be denied that in accordance with development of time so legal problem that occurs also develop in accordance with development of time. So in that thing judge have to be able to play their role legal finding to answer new legal problem where there is no regulation which regulate about it clearly. The role of judge in legal finding to answer problems that exist are certainly should have been applied in case that happen like this that is in appointment process of constitutional court justice that violate transparency and participation principles.

Why? because this case in the first time of case which occurred in Indonesia and right of organization to sue also for the first time applied in cases like this. In legal consideration of judges at High Court of Administrative Court about right of organization to sue that used by Plaintiffs as their legal standing basically their judgment about that thing is right. Assessment of judges at High Court of Administrative Court who asses that interests of Plaintiffs to sue is not personal and not suffered by Plaintiffs directly so then loss which suffered by Plaintiffs also cannot be determined clearly what became loss of plaintiffs if we being reviewed it is true but in this case opinions of judges of High Court of Administrative Court less appropriate because in case like this if there is violation in process appointment of constitutional court justice so automatically who suffered the loss is all Indonesian citizen even though the loss which suffered is loss that indirectly suffered and cannot be valued.

Therefore as a representative of all Indonesian citizen as long as that organization of society can fulfill the criteria to be filed a lawsuit and has a vision
and mission which in accordance with what became a loss for society then this thing be reasonable and justifiable if organizations of society filed a lawsuit. In addition, on the other hand legal standing that used by Plaintiffs in the form of right of organization to sue is proper for use by Plaintiffs. The expansion the meaning of right of organization to sue is true that used as the basis of judges in Administrative Court to decide the case because if the meaning and use of right of organization to sue only limited on the issues which relating to environment then how on the resolution of legal problem such as in this case like this. So the use of right of organization to sue for an organization of society is right actually not only limited can be used in case that relating to environment only although in general right of to organization to sue used in case relating to environment but in accordance with development of time and legal problems so use of right of organisation to sue for an organization of society outside of case that related to environmental issue is legitimate and reasonable to be applied and used by an organization of society as their legal standing to file a lawsuit to the judiciary institution but still have to fullfil the criteria and provisions that applied to can be file a lawsuit for an organization of society.

At the end in my opinion the expansion of the meaning which implemented by judges of Administrative Court to extend the meaning of right of organization to sue for Plaintiffs as their legal standing is a right thing to be applied in legal consideration of Administrative Court decision Number 139/G/2013/PTUN-JKT although it basically true that the reason for assessment of used as the basis of assessment by judges of High Court of Administrative Court is the right thing but the final decision of judges in decision of High Court of Administrative Court to
annul the decision of Administrative Court of Jakarta case Number 139/G/2013/PTUN-JKT is less appropriate to conducted because we can not denied that there is development and extend of term of interest and right of organization to sue.

CHAPTER V
CONCLUSION AND SUGGESTION

5.1 Conclusion
The conclusion from the data which obtained form Administrative Court of Jakarta verdict and interview conclude that transparency and participatory principles in Presidential Decree Number 87/P/2013 about the appointment of constitutional court justice was not implemented well. Administrative Court of Jakarta justice interpretate transparency and participatory principle in the
appointment of constitutional court justice as openness about everything that concerns the publication of names of constitutional court justice candidate, track record of constitutional court justice until the appointment of constitutional court justice.

On the other hand participation principle has the meaning as involvement of society in appointment constitutional court justice to give input, suggestions and opinion in the appointment process of constitutional court justice. Administrative Court of Jakarta justice assest that transparency and participatory principles in the process of appointment constitutional court in Presidential Decree Number 87/P Year 2013 has not implemented well by President. Nowadays process of appointment constitutional court justice has been developed better in accordance with transparency and participation principles well in appointment that conducted by President recently.

Regarding legal standing of Plaintiffs the judges in Administrative Court and High Court of Administrative Court has different opinions. The difference in the way of Judge to interpretate the term of interest and the right of organization to sue. The judges in Administrative Court using methods of extensive interpretation through extend the meaning of interest and the right of organization to sue. It should be done through consideration that the meaning of the interests not only be defined as of interests that suffered directly but interests of indirectly also can be used as the basis for a lawsuit for the Plaintiffs as long as Plaintiffs fulfil criteria to filed a lawsuit. Then about rights of organization to sue the judges in Administrative Court also thinks that the right of organization not only limited can be applied in issues that relating to environment because there are so many
Jurisprudence which recognized right of organization to sue in various issues outside of environment.

On the other hand High of Administrative Court of Jakarta justice has a different consideration from Administrative Court of Jakarta justice. High Court of Administrative Court of Jakarta justice assest that the term of interests which suffered by Plaintiffs must be interest that directly suffered by Plaintiffs. So Plaintiffs who have no interest directly cannot file a lawsuit. On the other hand Judges in High Court of Administrative Court has opinion that right of organization to sue can only be applied in issues that regulation about right of organization to sue has mentioned in legislation. So High Court of Administrative Court of Jakarta justice use restrictive method which make narrow the term of interests and rights of organization to sue.

Final conclusion is that Administrative Court interpretate transparency principle as openness and participation principles as involvement society in process of appointment of constitutional court justice. But in Presidential Decree Number 87/P year 2013 about Appointment of constitutional court justice by President, Administrative Court assumed that transparency and participation principles has not implemented well. In line with that Administrative Court and High Court of Adminstrative Court has different view in interpretate, use method of interpretation both of those terms interest and right of organization to sue. Administrative Court use extensive interpretate to extending the meaning of the interests and right of organization to sue and judges of High Court use restrictive interpretation to narrowing the meaning of the interests and rights of organization to sue.
5.2 Suggestion

Related with the appointment process of constitutional court justice there are some suggestion for the appointment process of constitutional court justice. The appointment process of constitutional court justice which conducted supposed to implement transparency and participatory principles. In accordance with legislation which applied. The appointment process of constitutional court justice must be transparent openly to society started from the process of recruitment until the appointment process should be informed transparently to society. In addition society also must be participate in giving their opinions relating to process of appointment of constitutional court justice. Another suggestion is there must be one system that regulate about the appointment process of constitutional court justice and there must be institution which supervise that process.

Furthermore there must be process of instituting in mechanism of appointment constitutional court justice based on transparency and participation principles. But it will be better if mechanism of appointment of constitutional court justice based on transparency and participation principles is instituted in Law of Constitutional Court but for alternative it can also in Presidential Decree, Supreme Court Regulation (Perma) or Tartib DPR.

And the last suggestion is the appointment process of constitutional court justice must be implemented the ideal appointment process of constitutional court justice such as House of Representative, Supreme Court and President should announce and give information to public about the names of constitutional court justice candidates, requirements to be constitutional court justice, the procedure and mechanism of the appointment process of constitutional court justice include
the schedule of test and interview which conducted by constitutional court justice candidates. Moreover House of Representative, Supreme Court and President should give guarantee and opportunity to society or organization of society to involve in the appointment process of constitutional court justice such as to give input about the constitutional court justice candidates, procedure and mechanism of the appointment process of constitutional court justice and give a question in process of interview which conducted by constitutional court justice candidates.

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