DECISION

Number 21/PUU-VI/2008

FOR THE SAKE OF JUSTICE UNDER THE ONE ALMIGHTY GOD

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA

[1.1] Examining, hearing and deciding upon constitutional cases at the first and final level, passing a decision in the case of petition for Judicial Review of Law Number 2/Pnps/1964 regarding the Procedures for the Execution of Capital Punishment imposed by a Court within the General and Military Court Jurisdiction, which has been stipulated as law by Law Number 5 Year 1969, against the 1945 Constitution of the Republic of Indonesia, filed by:

[1.2]

(1)	Name	:	**Amrozi bin Nurhasyim**;
	Religion	:	Islam;
	Place, date of birth	:	Lamongan, July 5, 1962;
	Sex	:	Male;
	Address	:	Tenggulun Village, Solo Kuro, Lamongan Regency, East Java.
(2)	Name	:	**Ali Ghufron bin Nurhasyim als. Muklas;**

	Religion	:	Islam;
	Place, date of birth	:	Lamongan, February 2, 1960;
	Sex	:	Male;
	Address	:	Tenggulun Village, Solo Kuro, Lamongan Regency, East Java.
(3)	Name	:	**Abdul Azis als. Imam Samudra;**
	Religion	:	Islam;
	Place, date of birth	:	Serang, January 14, 1970;
	Sex	:	Male;
	Address	:	Perum Griya Serang Indah Block B 12 No.12 Serang, Banten.

By virtue of Power of Attorney Number 01.TPM-Pst.Sku.MK.VIII.2006 dated August 16, 2006, granting the power of attorney to: A. Wirawan Adnan, SH., H.M. Mahendradatta, SH., MA., MH., H. Achmad Michdan, SH., Akhmad Kholid, SH., Qadar Faisal, SH., Fahmi Bahmid, SH., Agus Setiawan., SH., Rita, SH., Gilroy Arinoviandi, SH., Sutejo Sapto Jalu, SH., Hery Susanto, SH., Guntur Fattahillah, SH., Muannas, SH., and Abdul Rahim, SH., all of whom have the profession of Advocate and Legal Consultant, associated in Central **Moslem Lawyer Team**, having its address at Jalan Pinang I Number 9 Pondok Labu, South Jakarta 12450, acting for and on behalf of the Petitioners;

Hereinafter referred to as **the Petitioners**;

[1.3] Having read the petition of the Petitioners;

Having heard the statement of the Petitioners;

Having heard and read the written statements of the Government;

Having examined the evidence;

Having heard the statements of witnesses and experts of the Petitioners;

Having read the written conclusion of the Petitioners.

3. LEGAL CONSIDERATIONS

[3.1] Considering whereas the main legal issue raised in the Petitioners' petition is a formal and substantive review of Law Number 2/Pnps/1964 regarding the Procedure of the Execution of Capital Punishment imposed by a Court within the General and Military Court Jurisdiction, particularly Article 1, Article 14 paragraph (3) and paragraph (4) (State Gazette of the State of the Republic of Indonesia Year 1964 Number 38, hereinafter referred to as Law 2/Pnps/1964) which are considered contradictory to the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution);

[3.2] Considering, prior to considering the Principal Issue of the Petition, the Constitutional Court (hereinafter referred to as the Court) shall first consider:

1. Authority of the Court to examine, hear and decide on the *a quo* petition;
2. Legal standing of the Petitioners to act as Petitioners in the *a quo* petition.

With regard to both matters, the Court has the following opinion:

Authority of the Court

[3.3] Considering whereas based on Article 24C paragraph (1) of the 1945 Constitution, as well as Article 10 paragraph (1) sub-paragraph a of Law Number 24 Year 2003 regarding the Constitutional Court (hereinafter referred to as the Constitutional Court Law) *juncto* Article 12 paragraph (1) sub-paragraph a of Law Number 4 Year 2004 regarding Judicial Power, the Court has authority to hear at the first and final level, the decision of which is final in nature, to conduct, among others, judicial review of laws against the 1945 Constitution;

[3.4] Considering whereas the *a quo* petition is the petition for judicial review of a law, *in casu* Law 2/Pnps/1964 which was initially Presidential Stipulation Number 2 Year 1964 regarding the Procedures for the Execution of Capital Punishment imposed by a Court within General and Military Court Jurisdiction, which has been stipulated as law by Law Number 5 Year 1969 (hereinafter referred to as Law 5/1969), against the 1945 Constitution. Therefore, the Court has the authority to examine, hear and decide on the *a quo* petition.

Legal Standing of the Petitioners

[3.5] Considering whereas Article 51 paragraph (1) of the Constitutional Court Law states that the Petitioners are parties who deem that their constitutional rights and/or authorities have been impaired by the coming into effect of a law, namely:

a. Individual Indonesian citizens;

b. customary law community units insofar as they still exist and are in accordance with the development of the community and the principle of the Unitary State of the Republic of Indonesia as regulated in law;

c. public or private legal entities; or

d. state institutions.

Whereas to qualify as parties in the judicial review of law against the 1945 Constitution, the Petitioners must first:

a. explain their status, whether as individual Indonesian citizens, customary law community units, legal entities, or state institutions;

b. explain the impairment of their constitutional rights and/or authorities in legal status as intended in point a above.

[3.6] Considering whereas in its decision, namely as of Decision Number 006/PUU-III/2005 dated May 31, 2005 and Decision Number 11/PUU-V/2007 dated September 20, 2007 to the present, the Court is of the opinion that in order for the impairment of constitutional rights and/or authorities to be established, the following requirements must be met:

a. the Petitioners have constitutional rights and/or authorities granted by the 1945 Constitution;

b. the Petitioners consider that their constitutional rights and/or authorities have been impaired by the coming into effect of the law petitioned for review;

c the impairment of such constitutional rights and/or authorities must be specific and actual, or at least potential in nature, which, according to logical reasoning, can be ensured to occur;

d. there is a causal relationship (*causal verband*) between the aforementioned impairment and the coming into effect of the law petitioned for review;

e. if the petition is granted, it is expected that the constitutional impairment argued will not or will no longer occur.

[3.7] Considering whereas the Petitioner, an Indonesian citizen who has been sentenced with capital punishment in the Bali Bombing case, has constitutional rights granted by the 1945 Constitution, namely the right not to be tortured as regulated in Article 28**I** paragraph (1) of the 1945 Constitution which reads, "*The right to life, the right not to be tortured, the right of freedom of thought and conscience, the right to have a religion, the right not to be enslaved, the right to be recognized as a person before the law, and the right not to be prosecuted under retroactive law shall constitute human rights which cannot be reduced under any circumstances whatsoever."* Whereas based on the Petitioners' petition, connected with the provision in Article 51 of the Constitutional Court Law, the Petitioners are considered *prima facie* to have met the legal requirements to file the *a quo* petition*,* unless if the impairment of the constructional rights of the Petitioners, which is considered *prima facie* to have been fulfilled, is proved to the contrary in the consideration of the principal issue of the petition;

[3.8] Considering whereas although the Petitioners have met the qualifications as mentioned above, the Court must specifically consider the publicly known information regarding the Petitioners' statement in person, which has been repeatedly broadcasted in *Metro Realitas* program on Metro TV and in other media, that the Petitioners in fact have never questioned or intended to question the procedures for the execution of capital punishment, and therefore the Court considers it necessary to review the substantive truth of the Petitioners' Power of Attorney;

[3.9] Considering whereas the Petitioners' petition has been based on a valid power of attorney to file a petition for judicial review, but it has to be affirmed whether by their aforementioned statement in the mass media, the Petitioners have the intention to change their attitude and withdraw their petition. Since the Petitioners have never officially withdrawn the Power of Attorney and since the Petitioners' Attorneys-at-Law have never withdrawn their petition, the Court is of the opinion that the statements made outside the court do not need to be considered, and therefore the Court has to examine the Principal issue of the Petition.

Regarding Provisional Petition

[3.10] Considering whereas apart from filing a petition as stated in the Principal Issue of the Petition, the Petitioners also filed a provisional petition in order for the Court to agree to submit a notification to the Attorney General's

Office of the Republic of Indonesia to suspend the execution of the Petitioners in the context of following the judicial review of law currently being processed in the Court hearing, for the following reasons:

a. to preserve the constitutional rights of the Petitioners, it will be a wise and appropriate policy for the Court to agree to submit a notification to the Attorney General's Office as the executor of criminal decisions in the Unitary State of the Republic of Indonesia to suspend the execution of the Petitioners in the context of the process of the judicial review of law being filed;

b. whereas in addition, the legal basis of the application for the suspension of execution to be performed by the Attorney General's Office as the executor of criminal cases are Article 55 and Article 63 of the Constitutional Court Law, where the Court has been granted an authority to issue a stipulation that orders the Petitioners or the Respondents to suspend the execution of authority in a dispute on the authorities of state institutions;

c. whereas from the aspect of execution of authority, the Court must also consider whether or not it will greatly impact on the Petitioners. If the legal authority of the Attorney General's Office as the Government's instrument remains to be executed, the *a quo* petition will automatically become null, and therefore it does not give a fair trial for the Petitioners and their opportunity to know whether their petition is granted, hence it is similar to violating the rights of the Petitioners as regulated in Article 28D paragraph

(1) of the 1945 Constitution which reads *"Every person shall have the right to the recognition, the guarantee, the protection and the legal certainty of just laws as well as equal treatment before the law";*

d. The suspension of the execution of the Petitioners will not cause the nullification of the capital punishment to the Petitioners itself and the suspension of the execution of the Petitioners will not take a long time.

[3.11] Considering whereas with regard to the Petitioners' provisional petition, the Court gives the following considerations:

a. whereas the Constitutional Court Law does not recognize provisional petition in judicial review of laws;

b. whereas in every judicial review of laws, the reviewed laws shall remain in effect before the pronouncement of a decision stating that the law is contradictory to the 1945 Constitution (*vide* Article 58 of the Constitutional Court Law);

c. whereas the provisions on provisional petition are recognized in the case of the dispute on the authorities of state institutions as regulated in Article 63 of the Constitutional Court Law which states, "*the Constitutional Court may issue a stipulation which orders the Petitioners and/or the Respondents to suspend the execution of the authority disputed until a decision is passed by the Constitutional Court*";

d. whereas the mechanism of a provisional petition is that the provisional petition must be important and urgent in nature;

e. whereas a provisional petition is a temporary petition which does not have any relation whatsoever with the principal issue of the petition.

[3.12] Considering, based on legal considerations in paragraph **[3.11]** above, the Court is of the opinion that the reasons of provisional petition filed by the Petitioners are baseless and legally groundless, and therefore the provisional petition can not be accepted.

Principal issue of the Petition

[3.13] Considering whereas the issue that must be considered further by the Court is whether Law 2/Pnps/1964 regarding the Procedures for the Execution of Capital Punishment imposed by the Court in General and Military Court Jurisdiction does not meet the formal requirements of legislation stipulated in the 1945 Constitution (formal review), and whether Article 1, Article 14 paragraph (3) and paragraph (4) of Law 2/Pnps/1964 are contradictory to Article 28**I** paragraph (1) of the 1945 Constitution (substantive review), for the following reasons:

[3.13.1] whereas in formal review, the Petitioners argue:

- that Law 2/Pnps/1964 is a law, the legislation of which was based on the Stipulation of the President of the Republic of Indonesia which became a law due to the enactment of Law 5/1969 regarding Declaration of Various Presidential Stipulations and Regulations as Laws;

- that Law 2/Pnps/1964 is a law, the legislation of which was **authorized by the President** of the Republic of Indonesia with the **approval of the *Gotong Royong* People's Legislative Assembly (DPR GR),** which according to the Petitioners was not a people's representative institution as intended by the 1945 Constitution, since DPR-GR was formed on the basis of Presidential Stipulation and its members were also appointed by the President, whereas the members of the People's Legislative Assembly (DPR) as intended by Article 19 of the Amendment to the 1945 Constitution shall be chosen through the general election;

- that legislation according to the 1945 Constitution is as intended in Article 20 of the Amendment to the 1945 Constitution, but the legislation of Law 2/Pnps/1964 *juncto* Law 5/1969 was not in accordance with Article 20 of the 1945 Constitution, and therefore capital punishment execution procedure by shooting to death by a firing squad, which has been exercised in the State of the Republic of Indonesia, has been based on a law which did not comply with the 1945 Constitution in its legislation.

[3.13.2] whereas in substantive review, the Petitioners argue:

- that Article 1, Article 14 paragraph (3) and paragraph (4) of Law 2/Pnps/1964 are contradictory to the 1945 Constitution, particularly Article 28**I** paragraph (1) which reads, *"The right to life, the right not to be tortured, the right of freedom of thought and conscience, the right to have a religion, the right not to be enslaved, the right to be recognized as a*

person before the law, and the right not to be prosecuted under retroactive law shall constitute human rights which cannot be reduced under any circumstances whatsoever";

- that Article 1 of Law 2/Pnps/1964 provides that capital punishment is executed by shooting the convict to death. This sentence leads to an interpretation that the death that will be received by the convict does not happen with one shot, but with repeated shots until the convict dies. Therefore, there will be an extreme suffering before the convict eventually dies;

- that Article 14 paragraph (4) of Law 2/Pnps/1964 provides further confirmation of the possibility that death will not occur in one shot, therefore a terminating shot is required, with the sentence of the law that reads, *"If after the shooting the convict still exhibits signs of animation, the Commander of the Squad shall immediately order the Noncommissioned Officer of the Firing Squad to fire a terminating shot..."*; The *a quo* law therefore acknowledges that, prior to the final shot, the convict is still alive, whereas he is already in the condition of being shot and bathed in blood, and therefore extremely tormented, before the convict eventually dies with the final shot;

- that in addition to the matters above, the firing squad, in their duty to execute the convict according to Law 2/Pnps/1964, is obliged to target the convict's heart [*vide* Article 14 paragraph (3) of Law 2/Pnps/1964], but

Article 14 paragraph (4) of Law 2/Pnps/1964 provides that the terminating shot shall be conducted by pressing the barrel of the gun on the convict's head right above his ear. Therefore, this procedure does not give any certainty on the "absence of torture" in the convict's death process. If the legislators were of the opinion that the factor that might cause instant death was the shot above the convict's ear, why would there be a procedure which obliges to target the heart? This means that the legislators were unsure that the shot in the heart will cause instant death, and hence there is such provision of Article 14 paragraph (4) of the *a quo* law;

- that although an Indonesian citizen has the status of a prisoner on death row, his/her human rights are still guaranteed according to the 1945 Constitution, particularly in Article 28**I** paragraph (1), and therefore a torture to him/her by using capital punishment execution procedure based on Law 2/Pnps/1964 constitutes a violation of his/her constitutional rights, and therefore the substance of the *a quo* law is clearly contradictory to the 1945 Constitution.

[3.14] Considering whereas to support their arguments, the Petitioners, aside from presenting written evidences (P-1 through P-7), as completely included in the Facts of the Case section of this Decision, have also presented witnesses and experts whose statements have been heard, as well as experts'

written statements set out in the Facts of the Case section of this Decision, which essentially explain as follows:

[3.14.1] Statements of the Petitioners' witness Father Charlie Burrows

Whereas the witness is an Ecclesiastic who accompanied convicts Antonius and Samuel during the execution, and at the time, the witness was given an opportunity to step forward and unveil the black cloth covering the convicts' heads to pray together with Antonius and Samuel. Antonius then said that he was ready to depart from this world;

Whereas before the execution by shooting, the doctor put black cloths over the convicts' hearts as the sign for the firing squads, then the witness was ordered to step back 1 (one) meter behind the two firing squads and a sort of minutes on the verdict was read, after which both squads fired simultaneously. After the firing, Antonius and Samuel groaned in pain for approximately 7 (seven) minutes and blood began to flow slowly from their hearts, but the particularly moving part was the prolonged groan of pain. Then approximately 10 (ten) minutes after the firing, the doctor examined Samuel and Antonius and said that they have passed away, and then the bodies were carried for autopsy. Afterwards the bodies were cleaned and put into the coffins to be buried in Nusa Kambangan;

Whereas the execution of Antonius and Samuel was the first execution witnessed by the witness, where the convicts Antonius and Samuel were tied like a mummies, and the 7 (seven)-minute groan experienced by convicts Antonius and Samuel was felt like a torture;

[3.14.2] Expert statement of dr. Sun Sunatrio (Anesthetist)

Whereas the expert is a specialist in anesthesiology and intensive care, who regularly experiences cases rarely experienced by other doctors, namely deaths and most frequently clinical deaths, several of which can be resuscitated. Such matter causes the expert to be greatly concerned with the definition of death;

Whereas the definition of death adopted by Indonesia is the one declared by the Indonesian Medical Association, which is also in accordance with the definition adopted by other countries, despite a slight difference;

Whereas there are two definitions of death, *first*, classic definition, namely the definite or, in other words, irreversible cessation of the spontaneous function of breathing and circulation. This classic definition is similar throughout the world. *Second,* if a person experiences death of the brain stem, he/she is therefore declared dead even though the heart and the kidneys are still functioning, including the liver and the lungs. With regard to this second definition, there are other countries which adopt the definition of brain death, namely that they will wait for the entire brain to die before declaring the person dead;

Whereas the target of shooting in capital punishment by a firing squad is indeed the heart, but in reality the heart may not be hit, and if the heart is hit, it will be immediately destroyed, causing no circulation, and therefore within 7 (seven) to 11 (eleven) seconds, the person will lose consciousness. Therefore even if he groans, it will only be in a matter of 7 (seven) to 11 (eleven) seconds.

However, if the shot does not hit the heart, but instead the surrounding area, the person will only lose consciousness after shock and much loss of blood. In the aforementioned period of 7 (seven) minutes, the organ shot is probably the aorta near the heart, not the heart itself. If it had been the heart, the convict would have died in a matter of 15 (fifteen) seconds and then could be declared dead. According to the expert, if the person had been shot in the head and the brain had been hit, the person would immediately die according to the definition;

Whereas if the head is shot and the brain is destroyed, the person will instantly die. Whereas if the person is decapitated, there will be a length of time of 7 (seven) to 11 (eleven) seconds before the person totally lose consciousness; the length of time is similar to that should the person have been shot right in the heart, namely 7 (seven) to 11 (eleven) seconds after the circulation stopped;

Whereas lethal injections have been employed in many countries in the world, and according to the expert, some need to be criticized. In the United States of America, the person executing the punishment is not a doctor or a nurse. Since doctors and nurses are bound by ethics, the person executing the punishment is not a trained person. Such matter constitutes a shortcoming, but if it is true, the process would be as follows: two intravenous devices are inserted into the veins of the convict with one of them serving as a back up, one possibly inserted in the left hand and the other in the right hand. After intravenous devices with physiological NaCl are inserted, anesthetic known as Topental will be injected with a dose of 5 grams. It needs to be noted that if the expert anaesthetizes only with the intention to make the person sleep, he/she will only

need a dose of ¼ (a quarter) gram to 0.3 gram. Therefore, a dose of 5 (five) gram is almost certain to make the convict anesthetized, especially if the dose is toxic; that is, the person injected with the 5 (five) gram dose will instantly lose consciousness and stop breathing;

Whereas after the breathing has stopped and the person has lost consciousness, the second drug will be injected, namely the drug that weakens the muscles known as Pavulon. The drug will be injected with a dose of 8 (eight) milligrams, whereas the usual dose is 4 milligrams for adults. With a dose of 8 (eight) milligrams, it can be ascertained that all skeletal muscles will cease to function. Skeletal muscles are striated muscles, namely voluntary muscles, but smooth and cardiac muscles do not cease to function. If a mistake occurs due to the lack of expertise of the person performing the injection, the drug may leak out. If the drug leaks out and infiltrates the muscles, it will cause great pain, but since the convict will weaken in a matter of minutes, the pain will not be visible, even though the person may still be conscious due to the drug not entering the vein or due to lack of dose, since a person who is about to die is very tense and will produce a lot of adrenaline in the body, therefore making it harder for him/her to be put to sleep compared to a person in normal condition. Therefore, there is likely that the person is still conscious, and according to the investigations in the US, there were some people who might still be conscious after being anaesthetized. If the person has not lost consciousness, he/she will feel the weakening of muscles, the inability to breathe and the sensation of being choked upon injection, thus torturing the convict;

Whereas the third drug injected is potassium chloride with a dose of 50 (fifty) cc to stop the heart. If the convict has not fallen asleep when the potassium chloride is injected, the person will feel great pain similar to that experienced in heart attack since the mechanism is similar, namely the absence of oxygen in the heart. The fact that there were people who were still conscious when injected with potassium chloride has also been confirmed by *Land Health* magazine in the US by the examination of benetol level in the blood. Compared to other capital punishment procedures, lethal injection procedure seems to be more elegant, provided that it is performed correctly. However, this is difficult since doctors and nurses cannot be involved in the process, unless there is a change in the future;

Whereas decapitation only causes brief pain, namely in a matter of seconds from 7 (seven) to 12 (twelve) seconds. The length of time to death in shooting, however, varies. If the shooting misses the heart, it may take up to half an hour for the person to die, but if it is right in the heart, the time may range from 7 (seven) to 11 (eleven) seconds. Therefore, shooting that hits the heart on target and decapitation has similar time frame.

Whereas capital punishment by hanging, if performed correctly, namely by measuring the preciseness of the height and the length of the rope so as to cause the breaking of the neck, will take similar length of time as decapitation, but this rarely happens since the convict may have strong muscles, therefore his neck will not break immediately and the person may only feel strangled. A strangled person may remain conscious for approximately 5 (five) minutes before losing his consciousness, therefore he may be able to feel pain and struggle to

get loose, as well as defecating and showing signs such as bulging eyes and protruding tongue, and so forth;

[3.14.3] Expert statement of dr. Jose Rizal Yurnalis, SpBO. (Orthopedic surgeon)

Whereas the expert is an orthopedic and thromatologic surgeon who frequently performs surgery and works with anesthetic and also witnesses anaesthetization process. The expert has also served as a medical volunteer in areas of conflicts such as Tual, Ambon, Saparua, Halmahera Utara, Aceh and overseas areas such as South Thailand, Mindanau, Afghanistan, Iraq and South Lebanon. Therefore the expert frequently witnesses the process of death, whether through medical process or in the field;

Whereas in Maluku conflict, due to the horizontal war, the weapons used are sharp weapons and the most frequent occurrence is beheading. Whereas in Afghanistan, Lebanon, Iraq and Mindanau, the most frequent occurrences are gun-shot wounds, bomb injuries, and burns;

Whereas based on the expert's experience, if the person was shot by live ammunition, he/she would remain alive before slowly dying, certainly with groans of pain, if the shot did not directly hit the heart. However, if the person was shot directly in the heart, the heart will burst and the victim will instantly die. If the bullet only sideswept the heart, then hit the vena cava or aorta or the lung, the death will take an even longer time, sometimes ½ (half) an hour, 1 (one) hour, even up to 1 (one) day. Whereas in the case of beheading, the expert only saw

the result, and according to the witnesses, the person beheaded died instantly;

Whereas as a doctor, the expert is of the opinion that, scientifically, the center of life lies in the brain, especially the brain stem, whereas the heart has its own kind of transformer. The heart may still be able to pulsate when cut off and taken out from its place, but if the brain stem is destroyed or cut from the brain or its bottom part, breathing and vascular function may instantly cease. The expert's opinion is principally similar to that of doctor Sun Sunatrio, except that the expert sees the brain stem as playing an extremely central role;

Whereas anatomically, the center of life is regulated in the brain stem. If the target is the brain stem, there are two methods to stop the function of the brain stem, namely punishment by hanging and by decapitation, with decapitation being quicker .

[3.14.4] Expert statement of K.H. Mudzakir (Islamic law expert)

Whereas in wars, Moslems are prohibited from chopping enemies into pieces or torturing the enemies before killing them. Before or after death, enemies cannot be mistreated, meaning tortured before being killed or chopped into pieces after death. Even in slaughtering animals, Islam teaches us to do it humanely. For example, in the hadith related by *Imam Muslim*, it is said that the prophet Muhammad SAW said, *"Verily Allah has prescribed excellence in all things. Thus, if you kill, kill well; and if you slaughter, slaughter well. Let each one of you sharpen his blade and let him spare suffering to the animal he slaughters*." The hadith is a valid hadith included in *Sahih Muslim*. If the Islamic canon law

stipulates that killing may be performed, the killing should be performed in the most humane way, which does not inflict something negative such as torture. It is not allowed to torture animals, much less to torture human beings;

Whereas in its connection with shooting to death, if it can be proven that the person shot to death does not experience sufferings but instantly dies, such procedure is therefore justified according to the rules of Islam. For example, if flicking someone's ear with a finger may cause the person to die instantly, then this is the action that must be taken. But based on the facts learned from past occurrences, it is not found that capital punishment by shooting is an appropriate way;

Whereas according to the expert, based on the statements of witness Father Charlie Burrows, the procedure of execution by shooting to death is not a good procedure, since we are not entitled to torture, much less to cause pain. Even enemies may not be tortured. It is allowed to kill enemies, but they cannot be tortured before being murdered or chopped into pieces after death. If decapitation can be proved to be a better way, as many Moslem ulemas decide, execution must be performed in this manner and other methods must not be allowed;

Whereas in Islamic canon law, if the law has stipulated to allow something to be done, then it can be done, but if the law stipulated that it is not allowed, then it cannot be done. Indonesian Law is not similar to Islamic law: for example, if a person commits adultery while he/she is already married, the person has to be punished based on Islamic law, whereas outside the Islamic law, one of the

parties must first file a lawsuit. Therefore, if a person commits adultery and then receives punishment from the Indonesian law, he/she is not yet free from the Islamic canon law. Therefore, a person who commits a crime in Indonesia and is subsequently punished by the law based on the Indonesian Criminal Code (KUHP) or other applicable laws is not yet free from his/her responsibility before Allah, since the Islamic canon law has not been reinforced against him/her;

Whereas capital punishment execution procedures by shooting or other manners, apart from decapitation, still result in great pain, in addition to containing the elements of torture and degradation of human beings. Therefore, according to the expert, based on the ulemas' choice on decapitation since ancient times, there is no better procedure of the execution of capital punishment aside from decapitation.

[3.14.5] Expert statement of Dr. Rudi Satrio, S.H., M.H. (Criminal Law Expert)

Whereas the development of the execution of capital punishment began with Article 11 of KUHP, where it was executed by hanging, but changed with the existence of Presidential Stipulation Number 2 Year 1964 which determines the procedure through shooting to death. This is because the execution of capital punishment by hanging is no longer in accordance with the development, progress and situation, which may be interpreted or defined as implying that the procedure of capital punishment must bring quicker death and cause less suffering or torture;

The standard of the execution of capital punishment, when connected with the 1945 Constitution and Article 33 paragraph (1) of Law Number 39 Year 1999 regarding Human Rights which states, "*Every person shall be entitled to be free from torture, punishment, or cruel, inhumane treatment, degrading his dignity and nobility*", has the criteria that capital punishment may be executed if it is not cruel or degrading the dignity of human being itself;

Whereas in relation to the execution of capital punishment, according to the expert, the best way for the convict must be taken, in the sense that it does not torture by accelerating the process of death. Based on the development of science and technology, the best way has to be considered for the death to be devoid of torture and to be quicker in its process. Such consideration is a characteristic of law in order to allow the possibility of changes in capital punishment execution procedure at all times;

The execution of capital punishment as regulated in Article 11 of KUHP, which is performed by an executioner by hanging, must be adapted to Presidential Stipulation Number 2 Year 1964 following the enactment of the aforementioned stipulation, as contained in Article 18 Section IV on Transitional and Closing Provisions which states, "*Capital punishment sentenced before this stipulation which are yet to be executed shall be executed according to this stipulation"*;

Whereas even if capital punishment by shooting the convict to death is declared unconstitutional for the reason of the length of time before death being deemed as torture, according to the expert, this does not mean that Article 11 of

KUHP will again come into effect. Instead, the best, most appropriate, quickest and least torturing way must be found, or the procedure must be based on the convict's choice.

[3.14.6] Expert written statement of Dr. Salman Luthan, S.H., M.H.

The petition for the right of substantive review of Law 2/Pnps/1964 is the Petitioners' constitutional right, since the implementation of the law will impair their legal interests. The petition for the right of substantive review is already accurate, since the law may be declared contradictory to the constitution, particularly the provision of Article 28**I** paragraph (1) of the Amendment to the 1945 Constitution, if a method which is more humane than shooting to death can be found in the execution of capital punishment, for example by way of lethal injection;

Viewed from the aspect of its functions, DPR GR is similar to DPR since both institutions have legislative, budgetary and supervisory functions. However, when viewed from the process of their formation, the two institutions are different since DPR GR members are appointed by the President, whereas DPR members are selected through democratic general election process;

Law 2/Pnps/1964 was not legislated with thoughtful consideration as to whether the execution of capital punishment by shooting to death is the most appropriate, effective and humane way. The consideration to choose the execution of capital punishment by shooting to death is modeled after the provisions of *Gunsei Keizirei*, particularly the provision of Article 5, which was

issued on January 1, 1944 by the Japanese Colonial Government, and *Staatblad* year 1945 Number 123 drafted by the Dutch Colonial Government regulating the execution of capital punishment by shooting to death;

The execution of capital punishment by shooting to death was chosen because it was considered more practical and because it has lighter psychological impact for the executors as the shooting is performed together by 1 (one) firing squad. In other words, the execution of capital punishment by shooting to death is more oriented to the interest of the executors than that of the convict;

The fact that Law 2/Pnps/1964 has not been replaced or renewed (as ordered by the consideration section) to this day constitutes negligence of the legislators, since the law does not become a priority for the legislative body to renew. The Bill of the Indonesian Criminal Code (RUU KUHP) provides that the execution of capital punishment shall be performed by a firing squad, and never to be performed in public. However, RUU KUHP stipulates that the execution of capital punishment may be suspended with a probation of 10 (ten) years.

[3.14.7] Expert written statement of Muhammad Luthfie Hakim, S.H., M.H.

The execution of capital punishment in Indonesia, whether by hanging or shooting (in the heart), has never been performed openly (in public), but privately with strict restriction for parties who may witness it. Such capital punishment execution procedure does not provide an opportunity for the public to convey

judgment on their acceptance or rejection. Therefore, a conclusion cannot be drawn as to whether or not such procedures of capital punishment by shooting constitutes (has constituted) a ”living law” for the Indonesian society;

This is different from capital punishment and the procedure of its execution in several Middle East countries performed in public. In Saudi Arabia, for example, one of the places for the execution of this capital punishment is the yard of a mosque named Qishash Mosque, to be performed after the Friday prayer and witnessed by the followers of Friday prayer or by the public. In this matter, both the type and the procedure of capital punishment by decapitation have truly constituted the living law and practically have never been debated or disputed by the public or the intellectuals;

Capital punishment procedures still practiced in the world are: hanging, decapitation, shooting, electrocution or the electric chair, gas chamber and lethal injection;

Officially, there is no answer to the question as to why Indonesia adopted the procedure of execution by hanging (Article 11 of KUHP) in the past and later changed it to shooting to death (Law 2/Pnps/1964). The factor of ”militaristic” government which was close to the government of the People’s Republic of China (PRC) toward the end of Soekarno administration at the time may provide an answer with regard to the change of capital punishment procedure from hanging to shooting. For the military, capital punishment by shooting is a more honorable way of death compared to other methods. Clearly, capital punishment by shooting has been gradually abandoned in this century;

Capital punishment by shooting is indeed the most frequently used method in countries that still apply capital punishment. Until the year 2000, there were 69 countries which apply shooting procedure. However, this procedure tends to be replaced by other methods deemed to be better. China, for example, currently applies two methods of capital punishment, namely shooting and lethal injection. Similarly, transition has started in Guatemala and Thailand from shooting to lethal injection. In the US, almost all states have implemented the procedure of lethal injection;

With regard to capital punishment by decapitation, it is a good choice to be implemented in Indonesia. According to the expert, if the device to decapitate (usually a sword or axe) is truly sharp and the slashing technique performed by the executioner is right on target, the procedure of capital punishment by decapitation is known as the procedure with the greatest painlessness for the convict. The supply of blood to the brain will immediately cease. Further, the person will die in a matter of 60 seconds after the loss of consciousness due to extreme shock and anoxia (the sudden loss of oxygen) followed by the loss of blood pressure. Other studies have calculated that human brain can only live for 7 (seven) seconds after the head is cut off;

In the Islamic law, several procedures of capital punishment (for example by stoning, retaliation according to the way of murdering or *qishash,* where a person who kills by hitting with a stone must be killed in the same way) have been provided. Some procedures (for example burning a person alive, crucifying a person alive) are prohibited and other capital punishment procedures are not

determined, which are left to the authority to determine. Therefore, the convict shall be given the opportunity to choose, to the extent that the choice is not in the form of prohibited capital punishment procedure (according to Islam) and the convict shall remain executed in public to give *zawajir/*detterent effect.

[3.15] Considering whereas the Court has also heard the statement of the President (the Government), who in this case is represented by the Minister of Justice and Human Rights, as completely set out in the Facts of the Case section of this Decision, which principally explains as follows:

1. With regards to formal review (*formele toetsingrecht*)

    a. Whereas in the history of Indonesian law in the period between the Presidential Decree of July 5, 1959 and the year 1966, there was a disorderly hierarchy of laws and regulations which resulted in disorderly and overlapping legal products. This occurred as a logical consequence of the changes in the state administration system from the parliamentary system based on the 1950 Provisional Constitution to the presidential system based on the 1945 Constitution;

    b. Whereas after the transfer of power, hierarchization of legal products was performed as regulated in the Stipulation of the Provisional People’s Consultative Assembly (MPRS) Number XX/MPRS/1966 which contained hierarchy of laws and regulations. Then in its progress, the aforementioned MPRS Stipulation was

made as a legal basis for performing legislative review of legal products under the laws, especially those issued by the President. The result of the legislative review was included in Law 5/1969, which contained a list of legal products of Presidential Stipulations (PNPS) stipulated to be preserved and upgraded into laws, made into legislation materials in the future, and some of them were declared to be revoked;

c. Whereas Presidential Stipulation Number 2 Year 1964 belongs to the category of presidential stipulation stipulated to be preserved and upgraded in status into law, then the reference changed into Law 2/Pnps/1964 (the consonant “Pnps” shows that the law originates from a Presidential Stipulation);

d. Furthermore, the status of the aforementioned Law 2/Pnps/1964 constitutionally was legalized as law based on Article I of the Transitional Provision of the 1945 Constitution (after the amendment) which reads, “*All existing laws and regulations shall remain valid, as long as no new ones are established in conformity with this Constitution”;*

e. Whereas Law UU 2/Pnps/1964 contains legal norms regarding capital punishment execution procedures which are not similar to the legal norms contained in Article 11 of KUHP, and the aforementioned Law 2/Pnps/1964 does not explicitly revoke Article

11 of KUHP, and therefore according to the Government, the status of legal norms contained in Law 2/Pnps/1964 must be viewed as legal norms that are issued later (new law), whereas Article 11 of KUHP shall be viewed as old law;

f. Whereas according to legal principles (*lex posteriori derogat legi priori*), if old legal norms are created and later new legal norms with equal status are issued, containing similar substance with, or complementing (improving) and not containing norms contradictory to, the old legal norms, the new legal norms therefore shall apply (in this matter Law 2/Pnps/1964);

g. Therefore Law 2/Pnps/1964 which has been stipulated as law by Law 5/1969 has been in accordance with the spirit of the formulation of laws and regulations based on the 1945 Constitution (*vide* “Considering” basis of Law 5/1969).

2. With regard to substantive review:

a. Whereas the definition of “being shot to death” as regulated in Law 2/Pnps/1964 shall refer to the shot right in the convict’s heart. This is based on the assumption that the heart is the primary sign of life in human life, and therefore the shot that hits right in the human heart is an extremely lethal shot which may accelerate the process of death;

b. Whereas if it is proven that the convict still exhibits signs of animation after being shot in the heart, only then will he be shot on the head. The shot in the head is a terminating shot, and therefore according to the Government, the shot in the convict's head is understood as follows:

1) The shot right in the convict's heart is an ascertained lethal shot;

2) The shot right in the convict's head is not necessary if the shot on the heart has instantly killed the convict;

3) The shot right in the convict's head is performed as a terminating shot and only performed if the shot on the heart does not instantly kill the person (or if that person still exhibits signs of animation);

4) The shot right in the convict's head as the terminating shot is **intended to spare convict prolonged pain**.

c. In relation to whether or not there is an element of torture in the execution of capital punishment:

1) Whereas the feeling of pain certainly exists in the execution of capital punishment, since a person turns from being alive and healthy into being dead, which is done deliberately by shooting the person to death, and therefore the process of pain will certainly occur;

2) Whereas pain or painful process is different from torture, although both involve similar condition, namely pain. Pain is an unpleasant condition (in terms of health) experienced by a person. Torture is a condition of pain which is inflicted deliberately on a person. Pain or a feeling of pain is different from torture according to penal law. Pain or a feeling of pain is a natural process and if there is a deliberate human action involved, the intention is not to hurt, but as a logical consequence or a process for the purpose justified by law;

3) Whereas pain or painful process will definitely be experienced by a person deliberately executed in any form whatsoever. Pain or the process of pain experienced by a convict after execution is not an act of torture and is not intended to perform torture, but is a natural death process;

4) Whereas basically it is extremely difficult to create a death process that does not involve painful process (although there is a process known as euthanasia in the medical world, where patients who are terminally ill may make a request to their doctor to ”die conveniently”);

5) The question is how to determine the execution of capital punishment as belonging to the category of very painful, painful, not very painful or not painful. Undoubtedly, the only person who knows is the convict himself (while he already

died), therefore the people who are still alive are the ones who can estimate whether it is more painful to be shot to death, hanged, decapitated, or electrocuted;

6) According to the Government, the execution by shooting to death as regulated in Law 2/Pnps/1964 is an execution method or death process that takes lesser time compared to hanging (in accordance with Article 11 of KUHP).

[3.16] Considering whereas the People's Legislative Assembly (DPR) has submitted a written statement received in the Court's Registrar Office on October 16, 2008, which was submitted late and beyond the established deadline, but the content of which is, *mutantis mutandis,* similar to the statement given by the Government.

Opinion of the Court

Regarding Formal Review

[3.17] Considering whereas the Petitioners filed a petition for formal review of Law 2/Pnps/1964, principally arguing that the legal form and procedure of the formulation of Law 2/Pnps/1964 are not in accordance with the provision of the 1945 Constitution, and therefore the Petitioners request the Court to declare that Law 2/Pnps/1964 does not have any binding legal effect in its entirety;

[3.18] Considering whereas with regard to the aforementioned petition for formal review, the Court is of the following opinion:

a. whereas from its legal form, it is correct that Law 2/Pnps/1964 was initially Presidential Stipulation Number 2 Year 1964 which was not recognized in the 1945 Constitution, since the 1945 Constitution indeed does not regulate any legal product named Presidential Stipulation. However, this has been corrected with Law 5/1969 on the order of MPRS Stipulation Number XIX/MPRS/1966 and MPRS Stipulation Number XXXIX/MPRS/1968. Both the aforementioned Stipulations of the Provisional People's Consultative Assembly (MPRS) contained an order to perform a review of the legal status with regard to Presidential Stipulation and Regulation. The consideration section of Law 5/1969 reads, "*whereas in the context of purifying legislative products in the form of Presidential Stipulations and Presidential Regulations issued since July 5, 1959"* and *"whereas Presidential Stipulations and Presidential Regulations with substance that is in accordance with the aspiration of the people's conscience must be declared as law".* Therefore, with Law 5/1969, Presidential Stipulation Number 2 Year 1964 falls under Presidential Stipulation (Penpres) declared as law, namely as Law 2/Pnps/1964, and therefore its legal form is already in accordance with the 1945 Constitution. The word "Pnps" is merely a sign that the intended law originated from a Presidential Stipulation. The declaration of several Presidential Stipulations and Regulations as laws, including Presidential Stipulation Number 2 Year 1964, shows that the substance of the laws remains in accordance with the people's aspirations, as they constitute a

renewal of the provision of Article 11 of the Indonesian Criminal Code (KUHP);

b. whereas from its formulation procedure, Presidential Stipulation Number 2 Year 1964 is not in accordance with the 1945 Constitution, since the 1945 Constitution indeed does not recognize a legal product named "Presidential Stipulation". However, after Law 5/1969 declared Law 2/Pnps/1964 applicable, its formulation procedure has become in line with Article 5 paragraph (1) and Article 20 paragraph (1) of the 1945 Constitution, namely that it has been stipulated by the President with DPR's approval, in this case DPR GR as the legitimate DPR in the beginning of the New Order before DPR resulting from the general election was formed. The president and DPR GR who drafted Law 5/1969 and declared Presidential Stipulation Number 2 Year 1964 as Law 2/Pnps/1964 were the legitimate President and DPR in the period of state administration transition from Old to New Order and had been accepted and acknowledged by the Indonesian people;

c. whereas Article **II** of the Provisional Transition of the 1945 Constitution before the amendment which reads, "*All existing state institutions and regulations shall remain valid, as long as no new ones are established in conformity with this Constitution"* and Article **I** of the Provisional Transition of the 1945 Constitution after the amendment which reads, "*All existing laws and regulations shall remain valid, as long as no new ones are established in conformity with this Constitution"* become the basis for the

application of Law 2/Pnps/1964 to the present day, since new law regulating capital punishment execution procedure has not yet existed;

d. Whereas therefore, the Petitioners' arguments regarding formal review are groundless, and therefore must be rejected.

Regarding Substantive Review

[3.19] Considering whereas although in the *petitum* of their petition, the Petitioners only petition for formal review, but since the *posita* of and the substantiation process by the Petitioners have more connection to the substantive review of the law, the Court also considers the Petitioners' petition for substantive review of the *a quo* law;

[3.20] Considering whereas insofar as it concerns substantive review of Law 2/Pnps/1964, particularly Article 1, Article 14 paragraph (3) and paragraph (4) against Article 28**I** paragraph (1) of the 1945 Constitution, the Petitioners argue that capital punishment executed by way of **shooting to death** creates an understanding that the death received by the convict does not happen in "one shot", but has to be made in repeated shots until the convict dies, and therefore it causes extreme suffering before the convict eventually dies, while the convict still has constitutional right not to be tortured. With regard to the Petitioners' argument, the Court is of the following opinion:

[3.20.1] whereas the standard of torture to be made as guidance must refer to the formulation adopted in the legal instruments of Human Rights (hereinafter

referred to as Human Rights) applicable in Indonesia, as contained in Law Number 39 Year 1999 regarding Human Rights and Law Number 5 Year 1998 regarding the Ratification of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Article 1 sub-article 4 of Law Number 39 Year 1999 regarding human rights states that torture shall be *"any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."* The aforementioned definition of torture has referred to and completely quoted the foregoing Article 1 of Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ratified.

[3.20.2] whereas Indonesia's reasons to be a state party to the aforementioned convention against torture are, among others: (1) *Pancasila* as the ideology and the philosophy of life of the Indonesian nation and the 1945 Constitution as the national legal basis highly respect human status and dignity as reflected in the Principle of Just and Civilized Humanity. This principle is a constitutional mandate that the Indonesian nation is determined to prevent and prohibit any form of torture according to the content of the convention; (2) in the context of practicing *Pancasila* and implementing the 1945 Constitution,

Indonesia has basically stipulated laws and regulations which directly regulate the prevention and prohibition of any form of inhuman and degrading torture. However, the laws still require improvement as they have not been fully in accordance with the convention.

[3.20.3] whereas the pain referred to as torture is not something that happened naturally and normally, but something inflicted deliberately and unlawfully for specific purposes against the will of those tortured. The pain that arises naturally, such as that experienced by every woman who gives birth and people who undergo surgery for certain medical purposes, does not belong to the category of torture. Furthermore, the pain that arises and is inherent in the execution of capital punishment is something that is unavoidable in every method of capital punishment execution. The fact is that it is not actually something caused by the choice of the execution procedure, but something that is inherent in every capital punishment sentenced by the justice, which has been declared constitutional by the Court. The Convention has expressly stated that the formulation of torture regulated therein does not include pain or sufferings arising only from, inherent in or incidental to lawful sanctions.

[3.20.4] whereas nevertheless, with respect to capital punishment execution, the Court is of the opinion that a standard that must also be made as guidance is the avoidance of capital punishment execution that causes prolonged suffering of the convict as well as the torment felt, measured not only from the

subjective view of the convict himself, but also from the objective view of the society, who will consider such principal issue from the following matters:

- whereas the standard in determining whether a capital execution punishment procedure is cruel, inhuman and abnormal can be assessed from its execution, namely (i) if the method causes prolonged and unnecessary sufferings in causing deaths; (ii) if the method is contradictory to standards of morality embraced in society; and (iii) if the method does not preserve or maintain the convict's status and dignity as a human being;

- whereas the execution of capital punishment by shooting to death does not always happen in "one shot", but sometimes by way of a terminating shot, since there is no guarantee that one shot by the firing squad may cause death to the convict. Therefore, there remains two possibilities, namely that the shooting performed by a firing squad may kill instantly and may not kill instantly, the issue of which has caused the procedure employed to create unnecessary sufferings on the convict before he dies. Father Charlie Burrows' statement, which explained that the Convict Antonius endured 7 (seven) minutes of groaning in agony after being shot in the heart before being declared as having passed away, raises a question as to whether the method is in accordance with the standard mentioned above or whether there is other procedure that better satisfy the standard to avoid unnecessary sufferings to cause death;

- whereas the statements of experts presented by the Petitioners have stated the existence of other well-known methods of capital punishment execution, namely decapitation, electrocution, lethal injection, hanging and particularly for Islamic law, there is also a punishment known as stoning to death. From the aforementioned expert statements, it is learned that capital punishment by lethal injection, which is preceded by anaesthetization, does not cause unnecessary sufferings when performed by an expert, whereas decapitation causes instant death when performed in the right place, since the cessation of blood flow to the brain in 7 (seven) to 12 (twelve) seconds will cause death. Similarly, hanging will cause instant death if the position of the rope is exactly around the neck and if the convict has enough weight;

- whereas despite the fact that the development of science and technology needs to be utilized in law enforcement, especially in capital punishment execution procedures, the reduction of suffering or pain itself is not a sufficient reason for assessing the constitutionality of the norm in the aforementioned Law 2/Pnps/1964, since the execution of capital punishment by shooting to death may also happen quickly according to the expert statements if the shot directly hit the convict’s heart. In line with that, based on the expert statements heard in the hearing, there is no single method that guarantees painless or quick execution of capital punishment;

- whereas in addition, capital punishment by decapitation, hanging or shooting may cause instant death if performed correctly. However, capital punishment execution procedure must also consider the convict's status and dignity. According to the Court, capital punishment executed by shooting that is right on target may cause quick death and preserve the convict's status and dignity;

[3.21] Considering whereas with all the foregoing explanations, Law 2/Pnps/1964 providing for capital punishment execution by shooting indeed causes pain inherent in capital punishment execution as a result of valid decision of the judge. Although there are other procedures in capital punishment execution as proposed by the experts that may cause quicker death and may not cause prolonged pain, it is not related to the constitutionality of the reviewed law, since any methods, if not performed correctly, will cause pain that creates the impression of torture. Moreover, insofar as it is related to terminating shot due to the failure of the first shot, there has not been any data that proves the occurrence of failure, and therefore the Court has to set it aside. Nevertheless, the development of science and technology should be utilized in the research for capital punishment execution method which is more human, quicker and which does not cause prolonged pain. It is the duty of the legislators to study the possibilities to amend Law 2/Pnps/1964 in order for it to be more in accordance with the development of science and technology.

4. CONCLUSION

Whereas based on the considerations on facts and law as described above, the Court concludes:

[4.1] whereas the Petitioners' arguments regarding formal review are groundless, and therefore must be rejected;

[4.2] whereas the pain experienced by the convict is a logical consequence inherent in death process as the consequence of capital punishment execution on the convict according to the prevailing procedure, therefore does not fall under the category of torture to the convict;

[4.3] whereas various alternatives regarding capital punishment execution procedures aside from shooting, such as hanging, decapitation, electrocution, gas chamber and lethal injection, all of them involve pain despite different gradation and pace of death. There is no single method that guarantees painlessness in its execution; in fact, all methods contain the risk of inaccuracy in execution which may cause pain. However, it is not torture as intended by Article 28I of the 1945 Constitution, and therefore Law Number 2/Pnps/1964 regarding the Procedures for the Execution of Capital Punishment imposed by a Court within the General and Military Court Jurisdiction is not contradictory to the 1945 Constitution. Accordingly, the Petitioners' petition to the extent that it concerns substantive review is groundless by law and must be rejected.

5. DECISION

In view of Article 56 paragraph (5) of Law Number 24 Year 2003 regarding the Constitutional Court (State Gazette of the Republic of Indonesia Year 2003 Number 98, Supplement to the State Gazette of the Republic of Indonesia Number 4316), based on the 1945 Constitution of the State of the Republic of Indonesia,

Passing the decision,

To declare that the Petitioners' petition, whether regarding formal or substantive review, is rejected in its entirety.

Hence this decision was made in the Consultative Meeting of Justices attended by nine Constitutional Court Justices, on Wednesday, the fifteenth of October two thousand and eight, and was pronounced in the Plenary Session of Constitutional Court open for public on this day, Tuesday the twenty first of October two thousand and eight, by us, Moh. Mahfud, MD as Chairperson and concurrent Member, Maruarar Siahaan, H.M. Arsyad Sanusi, Muhammad Alim, H. Abdul Mukthie Fadjar, Jimly Asshiddiqie, Maria Farida Indrati, H.M. Akil Mochtar, and Achmad Sodiki, respectively as Members and assisted by Cholidin Nasir as Substitute Registrar and in the presence of the Petitioners/their Attorneys, the Government or its representatives, and the People's Representative Assembly or its representatives;

CHIEF JUSTICE,

signed

Moh. Mahfud MD

JUSTICES

signed	**signed**
Maruarar Siahaan	**H.M. Arsyad Sanusi**
signed	**signed**
Muhammad Alim	**H. Abdul Mukthie Fadjar**
signed	**signed**
Jimly Asshiddiqie	**Maria Farida Indrati**
signed	**signed**
H.M. Akil Mochtar	**Achmad Sodiki**

SUBSTITUTE REGISTRAR

signed

Cholidin Nasir