DECISION

Number 018/PUU-IV/2006

FOR THE SAKE OF JUSTICE UNDER THE ONE ALMIGHTY GOD

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA

Examining, hearing, and deciding upon constitutional cases at the first and final level, has passed a decision in the case of petition for Judicial Review of the Law of the Republic of Indonesia Number 8 Year 1981 concerning Criminal Procedure Code (hereinafter referred to as KUHAP) against the Constitution of the State of the Republic of Indonesia Year 1945 (hereinafter referred to as the 1945 Constitution) filed by:

Major General (Ret). H. Suwarna Abdul Fatah, born in Bogor on January 1, 1944, address: Jalan Gajah Mada Number 1 Rt. 008/003, Jawa Sub District, Samarinda Ulu District, Samarinda City 75122, religion: Islam, occupation: Active Governor of East Kalimantan Province, Indonesian citizen; In this matter granting power of attorney to K. G. Widjaja, S.H., M.H., Sugeng Teguh Santoso, S.H., P. D. D. Dermawan, S.H., LLM.,

Yanuar P. Wasesa, S.H., and Martinus F. Hemo, S.H. as Defending Team of Major General (Ret) of the Indonesian Armed Forces (TNI). Suwarna AF, with their address at The Landmark Center Tower B 8th Floor, Jalan Jend.Sudirman Number 1, Jakarta 12910, based on a Special Power of Attorney dated August 9, 2006;

Hereinafter referred to as **Petitioner**;

Having read the petition of the Petitioner;

Having heard the statement of the Petitioner;

Having heard the statement of the Government and read the written statement of the Government;

Having read the written statement of the People's Legislative Assembly of the Republic of Indonesia;

Having heard the statement of Attorney General's Office as Related Party;

Having read the written statement of Attorney General's Office as Related Party;

Having heard the statement of the Police Force of the Republic of Indonesia as Related Party;

Having read the written statement of the Police Force of the Republic of Indonesia as Related Party;

Having heard the statement of experts presented by the Constitutional Court of the Republic of Indonesia;

Having heard the statement of experts from the Petitioner;

Having examined the evidence;

LEGAL CONSIDERATIONS

Considering whereas the purpose and objective of the petition of the Petitioner are as described above;

Considering whereas prior to examining the principal case, the Constitutional Court (hereinafter referred to as the Court) shall first take the following matters into account:

1. Whether the Court has the authority to examine, hear, and decide upon the petition for judicial review of Article 21 Paragraph (1) of KUHAP;

2. Whether the Petitioner has the legal standing to file the petition for judicial review of Article 21 Paragraph (1) of KUHAP;

With respect of the foregoing two matters, the Court is of the following opinion:

1. AUTHORITY OF THE COURT

Considering whereas concerning the authorities of the Court, Article 24C Paragraph (1) of the 1945 Constitution, among other things, states that the Court shall have the authority to hear at the first and final level the decision of which shall be final in conducting judicial review of laws against the Constitution. Such provision is reaffirmed in Article 10 Paragraph (1) Sub-Paragraph a of Law Number 24 Year 2003 concerning the Constitutional Court (hereinafter referred to as the Constitutional Court Law).

Considering whereas the Petitioner filed a petition for judicial review of Law *in casu* KUHAP enacted on December 31, 1981, far before the amendment to the 1945 Constitution, which, pursuant to Article 50 of the Constitutional Court Law does not belong to the category of laws that can be reviewed in the Court, but in the Decision of the Court Number 066/PUU-II/2004 dated April 12, 2005, Article 50 of the Constitutional Court Law was declared not having binding legal effect, thus, the Court has the authority to examine, hear, and decide upon the petition of the Petitioner;

2. LEGAL STANDING OF THE PETITIONER

Considering whereas pursuant to Article 51 paragraph (1) of the Constitutional Court Law and Elucidation thereof, Petitioners in the judicial

review on a Law against the 1945 Constitution shall be parties who deem that their constitutional rights and/or authorities are impaired by the coming into effect of a Law, namely:

(a) individual Indonesian citizens (including group of people having a common interest);

(b) customary law community units insofar as they are still in existence and in accordance with the development of the communities 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.

Considering whereas in addition, since the pronouncement of Decision Number 006/PUU-III/2005 and subsequent decisions, the Court has determined 5 criteria of the impairment of constitutional rights as intended in Article 51 Paragraph (1) of the Constitutional Court Law, as follows:

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

b. Such constitutional rights and/or authorities are deemed to have been impaired by the coming into effect of the law against which review is petitioned;

c. The impairment of constitutional rights and/or authorities is specific and actual in nature, or at least potential in nature which, according to logical reasoning, will take place for sure;

d. There is a causal relationship (*causal verband*) between the impairment of constitutional rights and/or authorities and the law petitioned for review;

e. If the petition is granted, it is expected that the impairment of constitutional rights and/or authorities argued will not or does not occur any longer.

Considering whereas in his petition the Petitioner argued the following matters:

1. Whereas the Petitioner has been held in detention in the State Detention House of Criminal Investigation Department of the Police of the Republic of Indonesia (Bareskrim Polri) by the Head of Corruption Eradication Commission (in this matter T. H. Panggabean, SH.) pursuant to Article 21 Paragraph (1) of KUHAP, in the Detention Instruction No. Sprint. Han-10/VI/2006/P.KPK, dated June 19, 2006, and the detention was extended by the Head

of Corruption Eradication Commission (in this matter T.H. Panggabean, SH) in the Detention Extension Instruction No. Sprint.Han-09/PPJ/VI/2006/DIK/P.KPK, was then extended again through special detention [under Article 29 Paragraph (2) of KUHAP] for 30 days as from August 9, 2006 up to September 16, 2006 by the Stipulation of the Chairperson of the Corruption Court No. 136/Pen.Pid/VIII/2006/PN.JKT.PST and was extended again by the Stipulation of the Chairperson of Corruption Court No. 154/Pen.Pid/IX/2006/ PN.JKT.PST pursuant to Article 29 Paragraph (2) of KUHAP for 30 days as from September 17, 2006 up to October 16,2006;

2. Whereas due to the detention the constitutional rights of the Petitioner have been impaired as a result of the following violations:

   a. Whereas due to the detention the Petitioner lost his right to work as the Governor of East Kalimantan pursuant to Presidential Decree Number 103/M Year 2003, dated June 18, 2003;

   b. Whereas the Petitioner felt that he was treated as an object before the law and was treated not as an individual before the law (subject of law), pursuant to Article 28I Paragraph (1) of the 1945 Constitution;

Considering whereas based on the foregoing matters, the Petitioner meets the criteria as Petitioner in the judicial review of a law against the 1945 Constitution, because the constitutional rights granted by the 1945 Constitution are deemed to have been impaired by the coming into effect of the *a quo* Article 21 Paragraph (1) of KUHAP, and that the impairment of the Petitioners constitutional rights is specific and actual in nature, and there is a causal relationship between the impairment of constitutional rights and the coming into effect of the *a quo* Article 21 Paragraph (1) of KUHAP, and such impairment of the Petitioner's rights will not occur if the petition is granted. Therefore, the Court is of the opinion that the Petitioner has the legal standing in the *a quo* case;

Considering whereas, since the Court has the authority to examine, hear, and decide upon the *a quo* petition and the Petitioner has the legal standing, the Court will further consider the principal issue of the petition;

3. PRINCIPAL ISSUE OF THE PETITION

Considering whereas the petition of the Petitioner as completely described in the Principal Case, principally argued that Article 21 Paragraph (1) of KUHAP which reads:

"*The detention or extended detention instruction shall be conducted to a suspect or defendant who is strongly assumed to have committed a*

criminal act based on sufficient evidence, in the event of a circumstance that causes a concern that the suspect or defendant will run away, destroy or remove evidence, and or repeat the criminal act ", is contradictory to the 1945 Constitution namely:

(1) Article 28D Paragraph (1) which reads:

"*Every person shall have the right for fair legal acknowledgement, guaranty, protection, and certainty and equality before the law".*

(2) Article 28D Paragraph (2) which reads:

"*Every person shall have the right to work and to receive fair and proper remuneration and treatment in work relationships"*;

(3) Article 28G Paragraph (1) which reads:

"*Every person shall have the right to protect him/herself, his/her family, honor, dignity and property under his/her control, and shall have the right to feel secure and be protected from the threat of fear to do, or not to do something which constitutes human right"*;

(4) Article 28I 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”;

Considering whereas the Petitioner argued the absolute power of investigators/public prosecutors to put someone under detention needs a rational supervision conducted by a judicial institution (*judicial supervision of pre trial procedure*) because a closed and secret investigation causes anxiety among the people who may think that investigators will use over exceeding power to get confession from the suspect or statement from witnesses;

Considering whereas the Petitioner argued that Article 21 Paragraph (1) of KUHAP is parallel to Article 75 Paragraph (1) of HIR, in which HIR has a philosophical background of criminal judicature of *crime control model*, while KUHAP is closer to the characteristics of *due process model* which give more protection to human rights. The nature of HIR is inquisitorial in which defendant is only an object that must be heard of by the prosecutor with regard to presumption of guilt from the prosecutor, while KUHAP applies the principle of presumption of innocence and places human beings as subjects of law protected by Article 28I Paragraph (1) of the 1945 Constitution *“….the right to be recognized as a person before the law …* “ Thus, according to the Petitioner, Article 21 Paragraph (1) of KUHAP is not in accordance with criminal legal policy of KUHAP;

Considering whereas according to the Petitioner, the provision of Article 21 Paragraph (1) of KUHAP must be completed with a commissioner judge institution as in Continental European Countries that will be able to guarantee a defendant's rights because commissioner judge will evaluate whether or not it is reasonable for an investigator or public prosecutor to put someone under detention based on evidence obtained by the investigator, or the title of *commissioner* known in the United States as having a duty to make sure whether or not the criteria for the police to put someone under detention are sufficient;

Considering whereas according to the Petitioner the pre-trial examination institution regulated in Article 77 of KUHAP cannot be equalized to the commissioner judge institution in the European countries or *commissioner* institution in the United States, because in the pre-trial examination practices the judge only examines formal requirements as the basis for conducting a detention, hence the defendant's rights are not protected;

Considering whereas based on the foregoing reason the Petitioner argued that the provision of Article 21 Paragraph (1) of KUHAP is contradictory to Article 28D Paragraph (1) through Paragraph (4), Article 28G Paragraph (1) and Paragraph (2), and Article 28I Paragraph (1) through Paragraph (5) of the 1945 Constitution. Accordingly, for the provision of Article 21 Paragraph (1) of KUHAP not to be contradictory to

the 1945 Constitution, the phrase “committed a criminal act” and the phrase “in the event of a circumstance that causes a concern” in the *a quo* article must be removed by the declaration of the Constitutional Court that such phrases are contradictory to the 1945 Constitution so that they have no legal binding effect;

Considering whereas according to the Petitioner with the removal of such phrases, Article 21 Paragraph (1) of KUHAP will read, “*The detention or extended detention instruction shall be conducted against a suspect or defendant who is strongly assumed based on sufficient evidence, that the suspect or defendant will run away, destroy or remove evidences, and or repeat the criminal act*”. Article 21 Paragraph (1) of KUHAP as formulated by the Petitioner will require investigators or public prosecutors in executing detention or extended detention to refer to a strong assumption concluded from strong evidences that the suspect or defendant will run away, destroy or remove evidences and/or repeat the criminal act. Hence, detention is executed based on objective evidence and not just based on subjective judgment of the investigators or public prosecutors who often misuse it, resulting in constitutional right impairment of a defendant or suspect. The new formulation that requires strong evidence leading to a strong assumption can be used as a basis for review in the pre-trial hearing regarding whether or not a detention is executed legally. Thus, the legality of a detention is not evaluated merely based on formal or administrative criteria;

Considering whereas to support his arguments, the Petitioner submitted written evidence as Exhibits P-1 through P-11, and presented an expert namely Dr. Chairul Huda S.H., M.H., whose complete statement is included in the Principal Case, principally explaining the following matters:

- whereas Article 21 Paragraph (1) of KUHAP only provides for a subjective reason for executing detention namely when "*there is a concern that the suspect or defendant will run away, repeat criminal acts, or destroy evidence*". The phrase *"sufficient evidence* " in the *a quo* article should not only intended for criminal acts, but should also be used to presume that the defendant or suspect will run away, remove evidence or repeat criminal acts.

- In practice, Article 21 Paragraph (1) of KUHAP is interpreted in such a way that executing a detention shall be sufficiently based on subjective considerations of officials executing the detention without requiring objective standards. The norm of the *a quo* article at first glance indicates that objective consideration of why someone should be held in detention is unnecessary. Such formulation causes judges in pre-trial hearing practices to never consider substantial matters and to only examine administrative matters.

- Criminal Procedure Law should refer to the principle of "*no detention* " to be in accordance with the presumption of innocence, and not the principle of "*detention*" that can violate the rights of a defendant or suspect;

Considering whereas in examining the petition of the Petitioner, the Court also presented an expert Prof. Dr. Andi Hamzah, S.H. to hear his statement as the Chairperson of KUHAP Renewal Team appointed by the government, whose complete statement is included in the Principal Case, principally explaining as follows:

- whereas the paragraphs in Article 21 KUHAP is not put in a systematic order. The first item in the *a quo* Article should have been the present Paragraph (4), then followed by the present Paragraph (1), so as to arrange the criteria and detention and the reasons for detention in a logical order.

- whereas in the pre-trial examination practices, judges only examine the formality. In the KUHAP draft law currently prepared under the chairmanship of the expert, in pre-trial examination institution the judges of the district court will be substituted by commissioner judges in taking the role of decision making.

- whereas the current practices in applying Article 21 Paragraph (1) and Article 77 of KUHAP are caused not by the norm, but by the way such

norm has been applied, *It is not the formula that decides the issue, but the man who has to apply the formula*;

Considering whereas in examining the petition of the Petitioner, the Court has also heard the statement of the Government and the statement of the Related Parties in this matter the Attorney General's Office and Police Force of the Republic of Indonesia, as completely set out in the description of the Principal Case, principally concerning the following matters:

Statement of the Government

Whereas the Government is of the opinion that the authority held by law enforcement agents (Police Force, Attorney General's Office, Corruption Eradication Commission) to execute detention of a suspect or defendant has been in accordance with the principle of due process of law, because detention of a suspect or defendant can only be executed under strict requirements to prevent misuse of such an extensive authority which will in turn provide protection of human rights and will not harm the suspect or defendant concerned;

If in practice any impression that the provision of Article 21 Paragraph (1) of KUHAP seems to give an extremely extensive authority to law enforcement agents (Police Force, Attorney General's Office, Corruption Eradication Commission) to decide whether or not a suspect or

defendant is held in detention is not in any way related to the issue of constitutionality of a Law, but to the application of norms of the Law petitioned for review, and this is within the scope of authority of the legislators (the Government and the People's Legislative Assembly) to make amendments and adjustments (legislative review);

Statement of Attorney General's Office as the Related Party

Whereas with respect to the Petitioner's arguments, it can be explained that the instruction for detention or extended detention to be conducted against a suspect or defendant is an operational implementation of a norm, to which the Petitioner may file an objection as a legal effort in accordance with the prevailing law of Criminal procedures. The legal event encountered by the Petitioner has nothing to do with the constitutionality of the *a quo* Law*;*

Whereas Article 21 Paragraph (1) of KUHAP must be applied to all people who meet the objective and subjective criteria as provided for by the article, so as to apply the principle of equality before the law;

Whereas Article 21 Paragraph (1) of KUHAP provides the protection of human rights of a suspect or defendant in which detention or extended detention can be or cannot be executed against a suspect or defendant by considering the subjective and objective conditions of the suspect or defendant;

Statement of the Police Force of the Republic of Indonesia as the Related Party

Whereas Article 21 Paragraph (1) of KUHAP contains two matters; *First*, the objective criteria of detention, namely the commission of criminal acts which are subject to imprisonment of five years or more, or certain criminal acts referred to in certain articles; *Second*, subjective criteria, namely that when a person meets the criteria of detention, whether or not he should be held in detention highly depends on the situation on location;

Whereas the subjective criteria give necessary freedom or the so called discretion to investigators to make a decision based on mature consideration. The same thing applies to the attorney general's office that always hold a case hearing to carefully establish the investigation results concerning the necessity of detention;

Whereas the existence or urgency of Article 21 of KUHAP must be read in general and not phrase by phrase, because the criteria to execute *detention against a suspect is not limited to one reason only,* it must certainly meet both formal and material requirements. Material requirements include objective and subjective criteria. Objective criteria must be fulfilled first, namely the presence of actions subject to imprisonment of 5 years or specific articles being referred to although the punishment is less than 5 years [Article 21 Paragraph (4) of KUHAP].

Whereas formal criteria include sufficient preliminary evidence and detention warrant, a copy of which must be sent to the suspect, his family or legal advisor, and of all actions taken, the investigators shall make a Minutes. Only upon fulfilling the objective criteria, subjective criteria shall arise;

With respect to the foregoing description, the Court will give the following considerations:

Considering whereas in the substance of the Criminal Procedure Law there must be balance between human rights protected by the Constitution and the state's authorities to limit such rights in order to create public order. The Criminal Procedure Law reflects the exercise of state's authorities in investigation process, which has a direct impact on citizens' rights. A detention is a necessary action in law enforcement process although the detention itself is limited by human rights. Therefore, detention must be regulated by law that provides for clear procedures and requirements. This is conducted to avoid violations to human rights to the greatest possible extent. The amendment to the Criminal Procedure Law from HIR to KUHAP has been intended to improve the protection to human rights. Like criminal procedure laws in other countries, a detention is still necessary in criminal procedures. Thus, it is impossible to remove detention from the legal provisions of the Criminal Procedure Law. The existence of detention under the Criminal Procedure Code is painful but

necessary (*a necessary evil*). Efforts to minimize violations to human rights in detention are put in many ways namely among others by stipulating requirements for detention and stipulating reasons of detention and providing legal remedies for someone held in detention;

Considering whereas with the existence of Article 21 Paragraph (1) and Article 77 of KUHAP, the Court is of the opinion that it must be understood as an effort to give a legal foundation for detention as well an effort to reduce the exercise of the excessive authority by investigators or public prosecutors in executing detention. Although as stated by expert Dr. Chairul Huda, S.H., M.H., that Article 21 Paragraph (1) of KUHAP does not require “sufficient evidences” for the concern that a suspect/defendant will run away as the reason of detention, it is sufficient that there is a concern of the investigators or public prosecutors that the suspect or defendant will run away, destroy or remove evidences and or to repeat criminal acts. Therefore, according to the expert, detention consideration is very subjective;

Considering whereas with respect to the foregoing Petitioner’s arguments and expert’s statement, the Court is of the opinion that detention executed by investigators or public prosecutors must be based on sufficiently rational consideration and detention shall not be automatically executed only based on mere subjective intention of the investigators or public prosecutors. Law is very general in nature, and

despite the maximum efforts in the formulation, there are still possible of weaknesses. The application of Article 21 Paragraph (1) and Article 77 of KUHAP will depend on the implementing agents, namely investigators, public prosecutors, and judges in applying such provision in the context of preventing possible violation of a defendant's human rights. The formulation in Article 21 Paragraph (1) and Article 77 of KUHAP sufficiently accommodates the need for certainty and protection of human rights;

Considering whereas according to the expert Prof. Dr. Andi Hamzah, S.H., the KUHAP Renewal Team will make improvement by establishing commissioner judges so that the rights of defendants or suspects will be protected better. The pre-trial examination institutions regulated in Article 77 of KUHAP for the purpose of examining whether or not detention is valid, should not only evaluate the formal or administrative aspect of detention, but also a deeper aspect namely rationality of whether or not detention is necessary. The Court is of the opinion that the absence of phrase "*pursuant to sufficient evidence"* to prove the concern that the suspect or defendant will run away, destroy or remove evidence, and/or repeat criminal acts, as the reason for detention, does not close the door for pre-trial examination judges to asses the rationality of detention, because in Article 21 Paragraph (1) of KUHAP there is still a phrase "*in the event of a circumstance causing concern"*. This phrase can be made as a basis of whether there is a circumstance causing concern for

investigators or prosecutors to execute detention, and if the condition causing concern is very weak the pre-trial examination judge can declare that the detention has no rationality and therefore can be declared illegal;

Considering whereas based on the foregoing consideration it is clear that the existence of law institution (*rechtsinstituut*) of detention cannot be removed from the criminal procedure law. But what is needed is to lessen the impacts of detention institution on the violations of human rights. Such lessening of impacts can be performed by determining rational standards for executing detention and by creating a control institution. Article 21 Paragraph (1) and Article 77 of KUHAP are included in articles intended for lessening the impacts of law institution (*rechtsinstituut*) of detention on human rights;

Considering whereas with respect to the Petitioner's argument stating that Article 21 Paragraph (1) of KUHAP is contradictory to Article 28D Paragraph (1) of the 1945 Constitution, the Court is of the opinion that the existence of Article 21 Paragraph (1) of KUHAP cannot be set aside with the existence of Article 77 of KUHAP. Article 21 Paragraph (1) of KUHAP from the aspect of norm is adequate to make two interests meet, namely public interest to enforce order, and individual interest whose human rights must be protected. This is strengthened by the existence of pre-trial examination institution regulated in Article 77 of KUHAP. Current practices in the application of Article 21 Paragraph (1)

and Article 77 of KUHAP considered not adequately protecting the rights of defendants or suspects are within the scope of law application and not the matter of constitutionality of norms;

Considering whereas with respect to the Petitioner's argument stating that Article 21 Paragraph (1) of KUHAP is contradictory to Article 28D Paragraph (2), and Article 28I Paragraph (1) of the 1945 Constitution, the Court is of the opinion that it is groundless because Article 21 Paragraph (1) of KUHAP is not relevant to the substance of Article 28D Paragraph (2) of the 1945 Constitution. Article 21 Paragraph (1) of KUHAP reads, "*The detention or extended detention instruction shall be conducted against a suspect or defendant who is strongly assumed to have committed a criminal act based on sufficient evidence, in the event of a circumstance that causes a concern that the suspect or defendant will run away, destroy or remove evidence, and or repeat the criminal act*" while Article 28D Paragraph (2) of the 1945 Constitution reads, *"Every person shall have the right to work and to receive fair and proper remuneration and treatment in work relationships*". Thus, both are not related to each other. Meanwhile, with respect to the Petitioner's argument stating that Article 21 Paragraph (1) of KUHAP is contradictory to Article 28I 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", the Court is of the opinion that the right guaranteed by Article 28I Paragraph (1) of the 1945 Constitution which is closest to the detention institution is the right not to be tortured. However, the right not to be tortured guaranteed by this article is the right commonly known as *right against torture*, and is not related to detention institution. Thus, the Petitioner's argument stating that Article 21 Paragraph (1) of KUHAP is contradictory to Article 28I Paragraph (1) of the 1945 Constitution is groundless;

Considering whereas with respect to the Petitioner's argument stating that Article 21 Paragraph (1) of KUHAP is contradictory to Article 28G Paragraph (1) of the 1945 Constitution, the Court is of the opinion that detention institution is in fact directly connected with human rights including the right guaranteed by Article 28G Paragraph (1) of the 1945 Constitution. However, with the formulation in Article 21 Paragraph (1) of KUHAP the legislators have attempted to consider human rights of the defendants or suspects, hence KUHAP also provides pre-trial examination institution. Based on norms, the formulation of Article 21 Paragraph (1) of KUHAP has been balanced because it makes two interests meet, namely public interest and individual protection interest. Detention institution from the perspective of human rights and public interest becomes a painful but necessary thing (*a necessary evil*) and is inevitable. However, the provision of Article 21 Paragraph (1) of KUHAP is not excessive in terms

of norms, thus the provision is in accordance with Article 28J Paragraph (2) of the 1945 Constitution. The existence of Article 21 Paragraph (1) of KUHAP is still within the justifiable limits of rationality. Therefore, the Court is of the opinion that the Petitioner's argument stating that Article 21 Paragraph (1) of KUHAP is contradictory to Article 28G Paragraph (1) of the 1945 Constitution, is groundless;

Considering whereas based on all the above considerations, the Court is of the opinion that the Petitioner's arguments stating that Article 21 Paragraph (1) of KUHAP is contradictory to Article 28D Paragraph (1) and Paragraph (2), Article 28G Paragraph (1) and Article 28I Paragraph (1) of the 1945 Constitution are groundless, and hence the petition of the Petitioner must be declared rejected;

In view of Article 56 Paragraph (5) of the Law of the Republic of Indonesia Number 24 Year 2003 concerning the Constitutional Court (State Gazette of the Republic of Indonesia Year 2003 Number 98, Supplement to State Gazette of the Republic of Indonesia Number 4316);

PASSING THE DECISION

To declare that the petition of the Petitioner is rejected in it's entirely;

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Hence this decision was made in the Consultative Meeting of Constitutional Court Justices on Tuesday, December 19, 2006, by nine Constitutional Court Justices, and was pronounced in the Plenary Session open for the public on this day, Wednesday, December 20, 2006, attended by nine Constitutional Court Justices; Jimly Asshiddiqie as the Chairperson and concurrent Member, H. Harjono, I Dewa Gede Palguna, H.M. Laica Marzuki, H.A.S. Natabaya, H. Achmad Roestandi, Abdul Mukthie Fadjar, Maruarar Siahaan, and Soedarsono, respectively as Members, assisted by Cholidin Nasir as Substitute Registrar and in the presence of Petitioner/Petitioner's attorney, Government or its representative, the People's Legislative Assembly or its representative, and the Related Parties namely Attorney General's Office or its representative, and the Police Force of the Republic of Indonesia or its representative;

CHIEF JUSTICE,

SIGNED

Jimly Asshiddiqie.
JUSTICES

SIGNED	**SIGNED**
Harjono	**I Dewa Gede Palguna**

SIGNED	**SIGNED**
H.M. Laica Marzuki	**H.A.S. Natabaya**
SIGNED	**SIGNED**
H. Achmad Roestandi	**Abdul Mukthie Fadjar**
SIGNED	**SIGNED**
Maruarar Siahaan	**Soedarsono**

SUBSTITUTE REGISTRAR

SIGNED

Cholidin Nasir