

**EXCERPT FROM THE DECISION OF THE CONSTITUTIONAL COURT OF  
THE REPUBLIC OF INDONESIA**

Decision Number 3/PUU-VIII/2010 Concerning Judicial Review of Law Number  
27 Year 2007 regarding the Management of Coastal Areas and Small Islands  
under the 1945 Constitution of the State of the Republic of Indonesia

**DECISION**

**Number 3/PUU-VIII/2010**

**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 levels, has passed an decision in the case of petition for Judicial Review of Law Number 27 Year 2007 of the Management of Coastal Areas and Small Islands under the 1945 Constitution of the State of the Republic of Indonesia, filed by:

[1.2] 1. **The People's Coalition for Fishery Justice (*Koalisi Rakyat untuk Keadilan Perikanan/KIARA*)** in this regard represented by:

Name : **Muhamad Riza Adha Damanik;**

Occupation : Secretary General of the People's Coalition for  
Fishery Justice (KIARA);

Address : Jalan Tegol Parang Utara Number 43  
Mampang, South Jakarta;

Referred to as ..... **Petitioner I;**

**2. Indonesian Human Right Committee for Social Justice (IHCS)**

in this regard represented by:

Name : Gunawan;

Position : Secretary General of the Indonesian Human  
Rights Committee for Social Justice (IHCS);

Address : Jalan Mampang Prapatan XV Number 8A RT  
003/04, South Jakarta 12790;

Referred to as ..... **Petitioner II;**

**3. Study Center of Marine Development and Maritime Civilization  
(*Pusat Kajian Pembangunan Kelautan dan Peradaban  
Maritim/PK2PM*)** in this regard represented by:

Name : Muhamad Karim;

Occupation : Executive Director of the Association of Study  
Center of Marine Development and Maritime  
Civilization (PK2PM);

Address : Komplek Griya Melati, Block IV Number 7,  
Bogor Municipality, West Java;

Referred to as..... **Petitioner III**

**4. Agrarian Reform Consortium (*Konsorsium Pembaruan  
Agraria/KPA*)** in this regard represented by:

Name : Idham Arsyad;  
Occupation : Secretary General of the Agrarian Reform Consortium (KPA);  
Address : Jalan Durentiga Number 64 Pancoran, South Jakarta 12760;

Referred to as ..... **Petitioner IV**

5. **Indonesian Farmers' Union (*Serikat Petani Indonesia/SPI*)** in this regard represented by:

Name : Henry Saragih;  
Position : General Chairperson of the Indonesian Farmers' Union (SPI);  
Address : Jalan Mampang Prapatan XIV Number 5, South Jakarta 12790;

Referred to as ..... **Petitioner V**

6. **Sadajiwa Village Development Foundation (*Yayasan Bina Desa Sadajiwa*)** in this regard represented by:

Name : Dwi Astuti;  
Position : Managing Director of the Sadajiwa Village Development Foundation;  
Address : Jalan Saleh Abud Number 18-19 Iskandardinata, Jakarta 13330;

Referred to as ..... **Petitioner VI**

7. **Indonesian Legal Aid Institute Foundation (*Yayasan Lembaga***

***Bantuan Hukum Indonesia/YLBHI*** in this regard represented by:

Name : Patra Mijaya Zein;  
Position : Head of the Managing Board of the Indonesian  
Legal Aid Institute Foundation (YLBHI);  
Address : Jalan Diponegoro, Number 74, Central Jakarta;  
Referred to as ..... **Petitioner VII**

8. **The Indonesian Forum for the Environment (*Wahana Lingkungan Hidup Indonesia/WALHI*)** in this regard represented by:

Name : Berry Nahdian Forqan;  
Position : Executive Director of the Indonesian Forum for  
the Environment (WALHI);  
Address : Jalan Tegal Parang Utara Number 14, South  
Jakarta 12790;  
Referred to as ..... **Petitioner VIII**

9. **The Indonesian Farmers' Alliance (*Aliansi Petani Indonesia/API*)** in this regard represented by:

Name : Muhammad Nur Uddin;  
Position : Secretary General of the Indonesian Farmers'  
Alliance (API);  
Address : Jalan Slamet Riyadi IV/50 Kebun Manggis  
Sub-District, Matraman District, East Jakarta  
13150;

Referred to as ..... **Petitioner IX**

- 10.** Name : **Tiharom;**  
Occupation : Fisherman;  
Address : Marunda, RT 008/ RW 007, Marunda, Cilincing  
District, North Jakarta Municipality;

Referred to as ..... **Petitioner X**

- 11.** Name : **Waun;**  
Occupation : Fishing/Fishery Worker;  
Address : Hamlet 04 RT 03/08 Gebang Kulon Village,  
Gebang District, Cirebon Sub-District, West Java  
Province;

Referred to as ..... **Petitioner XI**

- 12.** Name : **Wartaka;**  
Occupation : Fishing/Fishery Worker;  
Address : Hamlet IV RT 02/09 Gebang Kulon Village,  
Gebang District, Cirebon Sub-District, West Java  
Province;

Referred to as ..... **Petitioner XII**

- 13.** Name : **Carya Bin Darja;**  
Occupation : Fishing/Fishery Worker;  
Address : Hamlet IV RT 03/09 Gebang Kulon Village,  
Gebang District, Cirebon Sub-District, West Java  
Province;

Referred to as ..... **Petitioner XIII**

- 14.** Name : **Kadma;**  
Occupation : Fisherman/Fishery;  
Address : Hamlet 04 RT 01/009 Gebang Kulon Village,  
Gebang District, Cirebon Sub-District, West Java  
Province;

Referred to as ..... **Petitioner XIV**

- 15.** Name : **Saidin;**  
Occupation : Fisherman/Fishery;  
Address : Hamlet 04 RT 01/09 Gebang Kulon Village,  
Gebang District, Cirebon Sub-District, West Java  
Province;

Referred to as ..... **Petitioner XV**

- 16.** Name : **Jamhuri;**  
Occupation : Fisherman/Fishery;  
Address : Hamlet 04 RT 003/009 Gebang Kulon Village,  
Gebang District, Cirebon Sub-District, West Java  
Province;

Referred to as ..... **Petitioner XVI**

- 17.** Name : **Rosad;**  
Occupation : Fisherman/Fishery;  
Address : Hamlet 04 RT 003/008 Gebang Kulon Village,  
Gebang District, Cirebon Sub-District, West Java

Province;

Referred to as ..... **Petitioner XVII**

- 18.** Name : **Tarwan;**  
Occupation : Fishing/Fishery Worker;  
Address : Dusun 04 RT 01/09 Gebang Kulon Village,  
Gebang District, Cirebon Sub-District, West Java  
Province;

Referred to as ..... **Petitioner XVIII**

- 19.** Name : **Tambrin Bin Tarsum;**  
Occupation : Fisherman/Fishery;  
Address : Hamlet 04 RT 02/10 Gebang Kulon Village,  
Gebang District, Cirebon Sub-District, West Java  
Province;

Referred to as ..... **Petitioner XIX**

- 20.** Name : Yusup;  
Occupation : Fishing/Fishery Worker;  
Address : Hamlet 04 RT 03/08 Gebang Kulon Village,  
Gebang District, Cirebon Sub-District, West Java  
Province;

Referred to as ..... **Petitioner XX**

- 21.** Name : **Rawa Bin Caslani;**  
Occupation : Fisherman;  
Address : Hamlet 04 RT 02/08 Gebang Kulon Village,

Gebang District, Cirebon Sub-District, West Java  
Province;

Referred to as ..... **Petitioner XXI**

- 22.** Name : **Kasirin;**  
Occupation : Fishing/Fishery Worker;  
Address : Hamlet 04 RT 003/009 Gebang Kulon Village,  
Gebang District, Cirebon Sub-District, West Java  
Province;

Referred to as ..... **Petitioner XXII**

- 23.** Name : **Salim;**  
Occupation : Fisherman/Fishery;  
Address : Hamlet 04 RT 003/009 Gebang Kulon Village,  
Gebang District, Cirebon Sub-District, West Java  
Province;

Referred to as ..... **Petitioner XXIII**

- 24.** Name : **Warta;**  
Occupation : Fishing/Fishery Worker;  
Address : Hamlet 04 RT 001/009 Gebang Kulon Village,  
Gebang District, Cirebon Sub-District, West Java  
Province;

Referred to as ..... **Petitioner XXIV**

- 25.** Name : **Rakim Bin Taip;**  
Occupation : Fisherman/Fishery;



Address : Hamlet 04 RT 02/09 Gebang Kulon Village,  
Gebang District, Cirebon Sub-District, West Java  
Province;

Referred to as ..... **Petitioner XXV**

**26.** Name : **Kadim;**

Occupation : Fishing/Fishery Worker

Address : Hamlet 04 RT 02/11 Gebang Kulon Village,  
Gebang District, Cirebon Sub-District, West Java  
Province;

Referred to as ..... **Petitioner XXVI**

**27.** Name : **Abdul Wahab Bin Kasda;**

Occupation : Fisherman;

Address : Hamlet 05 RT 01/09 Gebang Kulon Village,  
Gebang District, Cirebon Sub-District, West Java  
Province;

Referred to as ..... **Petitioner XXVII**

**28.** Name : **Mujahidin;**

Occupation : Fishing/Fishery Worker;

Address : Hamlet 04 RT 03/09 Gebang Kulon Village,  
Gebang District, Cirebon Sub-District, West Java  
Province;

Referred to as ..... **Petitioner XXVIII**

**29.** Name : **Kusnan;**

Occupation : Fisherman/Fishery;  
Address : Hamlet 04 RT 002/008 Gebang Kulon Village,  
Gebang District, Cirebon Sub-District, West Java  
Province;

Referred to as ..... **Petitioner XXIX**

**30.** Name : **Caslan Bin Rasita;**  
Occupation : Fisherman;  
Address : Hamlet 04 RT 03/07 Gebang Kulon Village,  
Gebang District, Cirebon Sub-District, West Java  
Province;

Referred to as ..... **Petitioner XXX**

**31.** Name : **Kartim;**  
Occupation : Fisherman/Fishery;  
Address : Hamlet 04 RT 002/009 Gebang Perikanan Village,  
Gebang District, Cirebon Regency, West Java  
Province;

Referred to as ..... **Petitioner XXXI**

**32.** Name : **Rastono Bin Cartib;**  
Occupation : Fisherman;  
Address : Gebang Udik Village, Gebang District, Cirebon  
Regency, West Java Province;

Referred to as ..... **Petitioner XXXII**

**33.** Name : Ratib Bin Takrib;

Occupation : Fisherman;  
Address : Hamlet 04 Gebang Kulon District, Gebang District,  
Cirebon Regency, Jawa Barat Province;

Referred to as ..... **Petitioner XXXIII**

**34.** Name : **Wardi;**  
Occupation : Fishing/Fishery Worker;  
Address : Hamlet 04 RT 003/09 Gebang Kulon Village,  
Gebang District, Cirebon Sub-District, West Java  
Province;

Referred to as ..... **Petitioner XXXIV**

**35.** Name : **Andi Sugandi;**  
Occupation : Fisherman;  
Address : Hamlet 04 RT 02/09 Gebang Kulon Village,  
Gebang District, Cirebon Sub-District, West Java  
Province;

Referred to as ..... **Petitioner XXXV**

**36.** Name : **Budi Laksana;**  
Occupation : Fisherman;  
Address : RT 010/011 Petamburan Sub-District, Tanah  
Abang District, Central Jakarta Municipality;

Referred to as ..... **Petitioner XXXVI**

By virtue of a Special Power of Attorney dated November 17, 2009,  
authorizing Ecoline Situmorang, S.H., Muhnur, S.H., Janses E. Sihaloho, S.H.,

Nurkholis Hidayat, S.H., M. Taufiqul Mujib, S.H., Febionesta, S.H., Riando Tambunan, S.H., Kiagus Ahmad Bella Sati, S.H., Ridwan Darmawan, S.H., Restaria F. Hutabarat, S.H., Henry David Oliver Sitorus, S.H., Edy Halomoan Gurning, S.H., B.P. Beni Dikty Sinaga, S.H., Muhammad Isnur, S.H., Ali Imron, S.H., Alghiffari Aqsa, S.H., Anton Febrianto, S.Hi., Tommy A.M. Tobing, S.H., Muhammad Zaimul Umam, S.H., Jumi Rahayu, S.H. LLM., Zainal Abidin, S.H., Tabrani Abby, S.H., M.Hum., Nur Hariandi, S.H., M.H., Andi Muttaqien, S.H.M., Rizal Siregar, S.H., M. Yudha Fathoni, S.H., Ganto Almansyah, S.H., Kristian Feran, S.H., Carolina S. Martha, S.H., Abdul Haris, S.H., Adam Mariano Pantouw, S.H., all being Advocates and Legal Aid Service Officers associated in the Advocacy Team for Rejecting the Coastal Water Area Concession (*Hak Pengusahaan Perairan Pesisir/HP-3*), having its legal domicile at Jalan Tegal Parang Utara Number 43 Mampang, South Jakarta 12790, acting both severally and jointly for and on behalf of the authorizers;

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 statement of the Government and the People's Legislative Assembly;

Having heard the statements of the Witnesses and Experts of the Petitioners;

Having heard the statements of the Witnesses and Experts of the

Government;

Having examined the evidence;

Having read the conclusions of the Petitioners and the Government;

## **2. FACTS OF THE CASE**

And so forth.

## **3. LEGAL CONSIDERATIONS**

**[3.1]** Whereas the purpose and objective of the petition of the Petitioners are concerned with substantive review of Article 1 sub-articles 4, 7 and 18, Article 14 paragraph (1), Article 16 paragraphs (1) and (2), Article 20 paragraph (1), Article 23 paragraphs (2), (4), (5) and (6), Article 60 paragraph (1) sub-paragraph b of Law Number 27 Year 2007 concerning the Management of Coastal Areas and Small Islands (State Gazette of the Republic of Indonesia Year 2007 Number 84, Supplement to the State Gazette of the Republic of Indonesia Number 4739, hereinafter referred to as Law 27/2007) under the 1945 Constitution of the State of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution).

**[3.2]** Whereas prior to considering the substance of the petition, the Constitutional Court (hereinafter referred to as the Court) shall consider the following matters first:

- a. the Court's authority to examine, hear and decide upon the petition *a quo*;
- b. legal standing of the Petitioners;

With respect the aforementioned two matters, the Court is of the following

opinion:

### **The Court's Authority**

[3.3] Whereas by virtue of Article 24C paragraph (1) of the 1945 Constitution as reasserted in Article 10 paragraph (1) of Law Number 24 Year 2003 of 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, hereinafter referred to as the Constitutional Court Law) and Article 29 paragraph (1) sub-paragraph a of Law Number 48 Year 2009 regarding Judicial Power (State Gazette of the Republic of Indonesia Year 2009 Number 157, Supplement to the State Gazette of the Republic of Indonesia Number 5076), one of the Constitutional Court's authorities shall be to review laws under the Constitution.

[3.4] Whereas the petition *a quo* concerned with Judicial review of law *in casu* Law No. 27/2007 under the 1945 Constitution, so that the Court shall have authority to examine, hear and deciding upon the petition *a quo*.

### **Legal standing of the Petitioners**

[3.5] Whereas pursuant to Article 51 paragraph (1) of the Constitutional Court Law along with Its Elucidation, parties which can act as Petitioners in a judicial review a Law under the 1945 Constitution shall be those who deem that their constitutional rights and authorities are impaired by the coming into effect of the Law petitioned for review, namely:

- a. individual Indonesia citizens (including group of people having a common interest);
- b. customary law community groups insofar as they are still in existence and in accordance with the development of the community and the principle of the Unitary State of the Republic of Indonesia regulated in Law;
- c. public of private legal entities; or
- d. state institutions;

**[3.6]** Considering also that, following Decision Number 006/PUU-III/ 2005 dated May 31, 2005 and Decision Number 11/PUU-V/2007 dated September 20, 2007 as well as the subsequent decisions, the Court is of the opinion that the impairment of constitutional rights and/or authorities as intended in Article 51 paragraph (1) of the Constitutional Court Law must meet five requirements, namely:

- a. the existence of constitutional rights and/or authority of the Petitioners granted by the 1945 Constitution;
- b. the Petitioners believe that such constitutional rights and/or authority have been impaired by the coming into effect of the law petitioned for review;
- c. the impairment of such constitutional rights and/or authority must be specific and actual or at least potential in nature which, pursuant to logical reasoning, can be assured of occurring;
- d. there is a causal relationship (*causal verband*) between the impairment of constitutional rights and/or authority of the Petitioners and the law

- petitioned for review;
- e. it is likely that with the granting of the Petitioners' petition, the impairment of such constitutional rights and/or authority argued by the Petitioners will not or will no longer occur;

**[3.7]** Whereas in accordance with the description in paragraphs **[3.5]** and **[3.6]** above, subsequently the Court will consider the legal standing of the Petitioners in the petition *a quo* as follows:

Whereas the Petitioners consist of various non-government organizations (private entities) or natural persons (individuals) known to have been striving human rights, especially in the marine sector, coastal community and agrarian access gap as well as the rights of the customary law communities in Indonesia, reflected in the Articles of Association/Bylaws and daily activities of the Petitioners;

Whereas the Petitioners believe that there is a causal relationship (*causal verband*) between the constitutional impairment and the coming into effect of the Law petitioned for a review because Law 27/2007, particularly Chapter V (Utilization) Articles 16 through 21 includes the issue of Coastal Water Area Concession (HP-3) which is inconsistent with Article 33 paragraphs (2) and (3), Article 27 paragraph (2), Article 28 and Article 28C of the 1945 Constitution. According to the Petitioners, the existence of Law 27/2007 only gives the opportunity and exclusive rights to rich investors and eliminates constitutional rights of the Petitioners who in this regard are speaking for and on behalf of common people increasingly marginalized by the application of the



aforementioned articles;

Whereas viewed from the legal facts in some archipelagic areas in Indonesia, privatization of islands and coastal areas has occurred which has great potential of grinding the existence of local fishermen as well as fishermen's maritime culture. The Petitioners consider that they have legal standing as parties in the petition for Judicial review of the law under the 1945 Constitution as required in Article 51 paragraph (1) of the Constitutional Court Law.

**[3.8]** Whereas based on the foregoing argument of the Petitioners in relation to Article 51 paragraph (1) of the Constitutional Court Law, as well as jurisprudence of the Court as described in paragraph **[3.6]**, the Court considers that the constitutional impairment of the Petitioners is potential, rather than actual in nature. However, even though the constitutional impairment of the Petitioners has not been actual in nature, the Court is of the opinion that the articles *a quo* have the potential to impair the constitutional rights of the Petitioners;

Based on the considerations above, the Court contends that the Petitioners have *legal standing* to file the petition for judicial review of the Law *a quo*.

**[3.9]** Whereas since the Court has authority to examine, hear and decide upon the petition *a quo*, and the Petitioners have legal standing, the Court subsequently shall consider the substance of the petition;

### **Substance of the Petition**

1. The Petitioners argue that Article 1 sub-articles 4, 7 and 18, Article 16 paragraph (1), Article 23 paragraphs (2) and (4) of Law 27/2007 are inconsistent with Article 28D paragraph (1) of the 1945 Constitution since there are potential overlapping between the Coastal Water Area Concession (HP-3) and the granting of rights or licenses by other agencies/in other sectors. Such overlapping of objects, among other things, are: (1) between HP-3 and license in forestry, namely concerning the utilization of mangrove forest, fauna/flora in coastal waters area, and the utilization of environmental service in the mangrove forest area; (2) between HP-3 and license in the field of mining, namely the utilization of sand as coastal area resource and under-sea mineral; (3) between HP-3 and license in the field of tourism, namely the development of beach tourism;

Whereas the potential overlapping between HP-3 and the granting of rights or licenses by other agencies/in other sectors are factually inconsistent with Article 28D paragraph (1) of the 1945 Constitution, namely that in this regard Article 1 sub-articles 4, 7 and 18, Article 16 paragraph (1), Article 23 paragraphs (2) and (4) of the Law *a quo* regulate matters which have been regulated in other laws and regulations, so that the application of such articles will lead to potential overlapping ultimately reducing and even eliminating the guarantee, protection and legal certainty for citizens, community, especially fishermen and coastal area residents;

2. The Petitioners argue that Article 1 sub-article 18 of the Law No. 27/2007 is inconsistent with Article 33 paragraph (2) and paragraph (3) of the 1945 Constitution because the HP-3 concept is not in line with the definition in Article 33 paragraph (2) and paragraph (3) of the 1945 Constitution. The concepts of proprietary right (*zakelijk recht*) and personal right (*persoonlijk recht*) are recognized in the discourse regarding the legal relationship between people (including natural person and legal entity) and the objects;

In accordance with the concept of State Control in the legal considerations of the Decision of the Constitutional Court in the case of Judicial review of the Oil and Gas Law, Electricity Law and Natural Resources Law, the Court interprets “**the state's right to control (*Hak Menguasai Negara/HMN*)**” not in the sense of state's ownership [*sic.*], but in the sense that the state formulates policies (*beleid*), makes regulations (*regelendaad*), performs the administration (*bestuurdaad*), performs the management (*beheersdaad*) and supervision (*toezichthoudendaad*) all being intended for the greatest prosperity of the people. The function of regulation/*bestuurdaad* includes granting and revocation of licenses and concessions. Since HP-3 more tends to personal right, it is more proper for a state to provide the concept of the HP-3 as a license. Based on the foregoing, it is evident that Article 1 paragraph (18) is inconsistent with the principle of control by the state in the sense of *bestuurdaad*.

3. The Petitioners argue that Article 14 paragraph (1) of Law 27/2007 is

inconsistent with Article 28A and Article 33 paragraph (3) of the 1945 Constitution due to conspicuous partiality with businessmen in the regulation of the utilization of coastal water areas through Coastal Water Area Concession (HP-3), which only involves Regional Government and the business sector. This exclusiveness is related not only to the proposal of strategic plan preparation, but also to utilization area size stating that, HP-3 includes the exploitation of sea level and water column up to the sea-bed surface [Article 16 paragraph (2) of Law 27/2007]. Subsequently, HP-3 is granted for specific extent and time, namely 20 years and with permitted extension for 20 years (Article 19 of Law 27/2007). The granting must consider the interest of preservation of the ecosystem of coastal areas and small islands, customary communities and the national interest as well as right of innocent passage for foreign ship (Article 17 of Law 27/2007);

Whereas Article 18 of Law 27/2007 indeed allows customary communities to obtain the HP-3, however its position seems just “supplementary”. Entrepreneurs, either natural persons of Indonesian Citizen or Indonesian business entities are still prioritized in the granting of the HP-3. Moreover, the required process of administration and requirements for the granting of the HP-3 are not definitely easy for customary communities to meet;

4. The Petitioners argue that Article 14 paragraph (1) of Law 27/2007 is

inconsistent with Article 1 paragraph (3) of the 1945 Constitution since the article *a quo* has cut the community's right in their position together with other legal subjects to propose the formulation of the Strategic Plan for the formulation of Coastal Areas and Small Islands Strategic Plan (*Rencana Strategis Wilayah Pesisir dan Pulau-Pulau Kecil//RSWP-3-K*), Coastal Areas and Small Islands Zoning Strategy (*Rencana Zonasi Wilayah Pesisir dan Pulau-Pulau Kecil//RZWP-3-K*), Coastal Areas and Small Islands Management Plan (*Rencana Pengelolaan Wilayah Pesisir dan Pulau-Pulau Kecil//RPWP-3-K*) as well as Coastal Areas and Small Islands Management Action Plan (*Rencana Aksi Pengelolaan Wilayah Pesisir dan Pulau-Pulau Kecil//RAPWP-3-K*);

Whereas the closing of the community's access to participation in the aforementioned plan formulation is a form of discriminatory treatment, so as to lead great impairment of citizen's constitutional rights (especially small fishermen) due to the provision of such article;

Whereas the RSWP-3-K, RZWP-3-K, RPWP-3-K, RPWP-3-K, RAPWP-3-K proposals as intended in Article 5 up to Article 14 of Law 27/2007 indeed have a great impact on the life the local fishermen (*users*). The involvement of the community based on the norms, standards and guidelines obtained only from the public and/or customary community consultations, either formally or by customary consensus, either formal or informal, constitutes an effort to weaken the resistance of fishermen or

coastal customary community of coastal areas;

Whereas the non-inclusion of the community or fishermen in the plan proposal as intended in Article 14 of Law 27/2007 results in a serious consequence for the existence of fishermen throughout Indonesia. The proposal for coastal area including marine areas bordering land areas covering 12 (twelve) nautical miles from the coast line connecting the coast and islands constitutes the area which becomes the fishermen's source of livelihood all this time;

Whereas the proposal of coastal area management plan as provided for in Article 5 up to Article 14 of Law 27/2007 is the initial strategy effort in the management of coastal areas since it includes activities of planning, utilization, supervision and control over human interactions in the utilization of resources of coastal areas and small islands;

Whereas the restriction of fishermen's access whether or not related to fishermen's rights to participate in the proposal of coastal area and small islands strategic plan is the form of breach of the *principles of a constitutional state*. The principles of a constitutional state, among other things, are firstly, the principle of recognition and protection of human dignity, freedom of individuals, groups, ethnic communities and national community. The second is the principle of legal certainty, namely that citizens shall be free from any unpredictable and arbitrary government and

official's actions;

5. The Petitioners argue that Article 14 paragraph (1) of Law 27/2007 is inconsistent with Article 28A of the 1945 Constitution since the community is not involved in the preparation of the proposal of strategic plan, which clearly constitutes an effort of marginalizing the community that factually depends on and fulfills their life needs in regions or areas becoming the objects of the HP-3;

Whereas the impairment and potential impairment have actually occurred such as control of islands and National Parks by the private sector, including foreign investors so that such policy threatens the existence and survival of traditional fishermen;

6. The Petitioners argue that Article 14 paragraph (1) of Law 27/2007 is inconsistent with Article 28D paragraph (1) and Article 28I paragraph (2) of the 1945 Constitution because the proposing process only involving the government and business circles has closed the community's access to involvement, particularly the local community;
7. The Petitioners argue that Article 16 paragraphs (1) and (2) of Law 27/2007 is inconsistent with Article 18B paragraph (2) of the 1945 Constitution since the use of coastal waters requires the possession of HP-3 certificate;
8. The Petitioners argue that Article 16 paragraphs (1) and (2) of Law

- 27/2007 is inconsistent with Article 28A of the 1945 Constitution since the existence of HP-3 has potential to eliminate the right to survival/livelihood of local and traditional customary communities living in coastal areas;
9. The Petitioners argue that Article 16 paragraphs (1) and (2) of Law 27/2007 is inconsistent with Article 33 paragraph (1) of the 1945 Constitution since the existence of HP-3 results in practices of privatization of coastal areas, so that it would be impossible for the economy to be arranged as a common endeavor based upon the principle of family system as set forth in Article 33 paragraph (1) of the 1945 Constitution;
  10. Whereas Coastal Water Area Concession has the potential that legally will evict customary and traditional communities whose living space is in coastal areas. Meanwhile, the concept of State Control based on the legal considerations of the Decision of the Constitutional Court on the case of Oil and Gas Law, Electricity Law and Natural Resources law, interprets **“the state's right to control (*hak menguasai negara/HMN*)”** not in the sense of state's ownership [*sic.*], but in the sense that the state formulates policies (*beleid*), makes regulations (*regelendaad*), performs the administration (*bestuurdaad*), performs the management (*beheersdaad*) and supervision (*toezichthoudendaad*) all being intended for the greatest prosperity of the people.. The function of regulation (*bestuursdaad*) includes the granting of and revocation of licenses and concessions;



Whereas since HP-3 favors entrepreneurs, the goal of natural resources control for the greatest prosperity of the people will not be achieved;

Whereas Coastal Water Area Concession (HP-3) made by the Central Government and Regional (province and regency/municipality) Government changes the regime of sea management in Indonesia. This change from open access and common property right to property right means that coastal area and small islands are more exclusive. Andre Groz (2005), in his book entitled *Ecology as Politics*, criticizes the granting of exclusive rights to capital owners, since the granting of such rights creates injustice so as to trigger high poverty rate in coastal community, particularly the traditional fishermen;

11. The Petitioners argue that Article 20 paragraph (1) of Law 27/2007 is inconsistent with Article 33 paragraph (3) of the 1945 Constitution since the mechanism of the HP-3 encourages the commercialization of coastal waters because the concept of the HP-3 in this Law constitutes property right so that the HP-3 may be transferred, assigned and even made debt security as well as imposed with security rights;

Whereas the existence of the HP-3 which can be transferred and collateralized will eliminate effective sovereignty of the state to manage waters and coastal areas for the greatest prosperity of the people;

12. The Petitioners argue that Article 23 paragraphs (4), (5) and (6) of Law 27/2007 is inconsistent with Article 18B paragraph (2), Article 28C paragraph (2) and Article 28H paragraph (2) of the 1945 Constitution due to partiality with entrepreneurs. The granting of the HP-3 to entrepreneurs is not hampered even though the community has used such area for the benefit of their life. The Government or the Regional Government will still issue the HP-3 after conducting consultation with the relevant community. For that purpose, the regent/mayor (is obligated) to facilitate the intended consultation. This provision is ambiguous since Article 23 paragraph (5) of Law 27/2007 gives the impression that the Government or Regional Government conducts consultation with the relevant community, while Article 23 paragraph (6) of Law 27/2007 states that the Regent/Mayor shall facilitate such consultation;
13. The Petitioners argue that Article 60 paragraph (1) sub-paragraph b of Law 27/2007 is inconsistent with Article 28A of the 1945 Constitution since the word “compensation” points more to the strategy of eviction of the local community so that their area can be used for the HP-3;
14. The Petitioners argue that Article 60 paragraph (1) sub-paragraph b of Law 27/2007 is inconsistent with Article 28G paragraph (1) of the 1945 Constitution since the constitution of the Republic of Indonesia has explicitly stated the protection and guarantee of people's life fulfillment, which is in fact violated by Law of 27/2007 since it has neglected the

interest of common people. The community relying on their economic life being potentially expelled by an excuse that the community has been given compensation;

**[3.10]** Whereas to prove their arguments, in addition to providing written evidence marked as Exhibit P-1 up to Exhibit P-23, the Petitioners have also presented 5 (five) Experts, namely **Ronald Z. Titahelu, Nurhasan Ismail, Supriadi Adhuri, Henry Thomas Simarmata** and **I Nyoman Nurjaya** as well as 3 (three) witnesses, namely **Masnun, Karyono** and **Bona Beding**, with detailed description being already included the Facts of the Case part of this decision and their statements have been heard at the hearings on April 27, 2010 and June 8, 2010, principally as follows;

1. **Expert Ronald Z. Titahelu**

- There are two matters concerning the existence of the customary law communities in the 1945 Constitution, namely *first*, in Article 18B of the 1945 Constitution, recognizing customary law communities, although with the addition namely insofar as they are still in existence and in accordance with the Unitary State of the Republic of Indonesia is added therein. The *Second* is mentioned in Article 28I paragraph (3) of the 1945 Constitution referring to protection.
- Based on the Government's Planning, such authority is not based

on the giving found of the state, but based on the nature of the traditional society itself. Therefore, naturally the rights have been attached to them. and thus, the part of Article 18B of the 1945 Constitution is proper. The Government recognizes their rights. Legal recognition through laws and regulations has been merely in the form of collective enumeration, while it is not substantially apparent. Various laws and regulations still even see customary communities from the aspect of economic growth, so they tend to ignore the rights of the customary law communities.

## **2. Expert Nurhasan Ismail**

- Three matters related to Judicial Review of Law 27/2007 under the substance and spirit of the 1945 Constitution, namely *First*, that the regulation of the HP-3 object contains disharmony, inconsistency, both internally and horizontally, with the provision in Article 28H paragraph (1) of the 1945 Constitution. The manifestation of its disharmony and inconsistency is that the regulation of the HP-3 object does not guarantee legal certainty as stated or provided for in Article 28H paragraph (1) of the 1945 Constitution. Internally, there are three different objects serving as HP-3 objects which, due to their difference, of course the principle of specialty which must always exist present in attaching the right attachment on one particular object will not be met. In Law of 27/2007, for example; an

object that may be attached with coastal water concession is the coastal water area itself. Law 27/2007 states that coastal water area is water surface including its column to the first land limit in the sea which can serve object able to be attached with the HP-3.

- Law 27/2007 contains disharmony. Article 61 of Law 27/2007 clearly provides the recognition, respect and protection of customary law communities. The best manifestation is in Article 61 of Law 27/2007, while in Article 18 of Law 27/2007, the customary law community is positioned as one of the subjects of the HP-3. This means that the position of customary law communities is equal to legal entities and natural persons. It means that the Government respects and protects customary law communities in Article 61 of Law 27/2007, while Article 18 of Law 27/2007 does not position customary law communities in the context of governmental entity, but it places them parallel to natural persons and other legal entities. Even it has to be observed further that in Article 21 paragraph (4) sub-paragraph b of Law 27/2007, the existence of customary law communities is subordinated to the holders of HP-3 since it is stated that the holders of the HP-3 must foster and empower customary law communities. It is a condition of regulation that is directly inconsistent with Article 18B paragraph (2) of the 1945 Constitution.

### 3. Expert Supriadi Adhuri

- Article 16 paragraph (1) of Law 27/2007 is inconsistent with Article 18B paragraph (2) of the 1945 Constitution since this article implicitly considers the practices of sea traditional (*ulayat*) right and traditional coastal area management whose objects are the same with Article 16 paragraph (2) of Law 27/2007 non-existent and replaced with the HP-3. The legislators of Law 27/2007 might argue that this article only nullifies tradition temporarily until the customary law community files an application for HP-3. This matter is illogical since there is no requirement proposed by constitution for the recognition of its customary and traditional rights. Therefore, the HP-3 requirements are is inconsistent with the constitution.
- Scrutinizing the HP-3 in Article 18 sub-paragraphs a, b and c of Law 27/2007, special treatment for fishermen in dealing with natural person of Indonesian citizen, legal entity established under laws of Indonesia or the customary law community does not appear. It almost can be confirmed that without special treatment, fishermen will not be capable of competing with other parties probably applying for the HP-3 as mentioned in Article 18 sub-paragraphs a, b and c of Law 27/2007. With life order and limited resources identified above, it is almost impossible that the customary law community can meet the requirements for the application for the

HP-3 as indicated in Article 21 paragraphs (1) through (5) of Law 27/2007. Accordingly, the HP-3 is inconsistent with Constitution and will tend to marginalize fishermen's community in general.

#### **4. Expert Henry Thomas Simarmata**

- Law 27/2007 also creates a new legal category, in this matter starting land commercialization, also including land speculation. For Indonesia, the country with the longest coastal line in the world and also small islands, this type of commercialization will allow for corporation commercialization on a greater scale. It can be observed that the HP-3 applies the pattern of single ownership or closed ownership, meaning that once it is determined, the HP-3 requires economic and ecological participation of other parties. This does endanger state resilience both ecologically and also economically. Specifically, other sciences help identify why this closed ownership is disadvantageous. An Important thing is also that natural resource commercialization will cause management pattern become profit making or even land grabbing .
- The first problem at the state level is the existence of weakening or obscurity, in areas far away from the centrism of the state, especially with archipelagic characteristics. The obligation of the state can become very obscure due to the existence of the HP-3, and it is also inconsistent with the foundation and responsibility of

the state as stated in Article 33, Article 27, Article 28, Articles 28A through 28H and Article 18B of the 1945 Constitution. The second problem, at the structural level, is that this provision is completely hypothetical with the possibility of great economic speculation, so that it heavily relies on the condition, and also on capital and power. Another problem is the weakening of the right to sue and access rights of the community in relation to closed ownership. Once determined, the participation of community without obtaining the license will become very weak and may become the weakest in social, cultural and economic conditions.

## 5. Expert I Nyoman Nurjaya

- Implications that may arise from the development of orientation barely intended to pursue development targets, namely: *Firstly*, to pursue the target of use oriented rather than-resource-oriented exploitation, more regarding the management. *Secondly*, the necessity of domination or partiality with business actors, high capital orientation, major capitalists' domination. *Thirdly*, there is sectoral nuance as followed in Indonesia in the management. There are legal implications called conflicts of norms, norm conflict between equal Laws, in relation to the management of natural resources, horizontal conflict; vertical conflicts between superior regulations and inferior regulations (*lex superior derogat legi*



*inferiori*), and so on. Subsequently, another implication is limited access to information, transparency, public participation, public accountability. There is a tendency called *politics of ignorance* in relation to the utilization of natural resources, ignorance of the customary community's rights to the access to and utilization of natural resources.

- There are two important issues in Chapter V and Chapter XI highlighted by the Petitioners, namely *first*, the relation to the granting of coastal water area concession, HP-3. The experience in the past is whether to use coastal water Concession or to use the form of business license. Subsequently, the HP-3 may be transferred, exchanged, granted, included in corporate capital and collateralized as the object of security rights, whether it is included in public or private domain. The other problem is forest exploitation concession without being initialized with environment impact assessment preconditions based on the principle of carefulness, since business must be differentiated from activities. For business, it is clearly profit-oriented, meanwhile the Government conducts development activities, with development programs of infrastructure activities. Therefore, for business, it should be a license rather than a right;

## **6. Witness Masnun**

- PT. KLI started operation in 1990 and the impacts were sensed in 1997, namely abrasion causing many ponds to be missing and damaged. Missing ponds, according to data collected by the community, covered an area of 152.48 hectare, while lightly damaged ponds, meaning ponds damaged and repairable, but occasionally broken-down when seeds were spread due insufficient size, covered 55.5 hectare. Meanwhile, severely damaged ponds which could be used to raise fish but by using netting or mesh covered 37 hectare. There was waste pollution, namely solid waste, liquid waste or waste from the air. Solid waste was wood chips, liquid waste was in the form of dangerous chemical substance called *runti* that was used to make wood uneasily broken. Meanwhile, air pollution was in the form of sawdust that greatly disturbed the community.

## **7. Witness Karyono**

- In 1995 and 2007, PT. Purna Taru Murni came to the residential area of the witness in Tanjung Pakis Village. Unanimously, the community rejected the presence of the company intending to dredge up sand from Tanjung Pakis Village. Due to the sand dredging, fishermen's income decreased because place where they harvested was damaged because the environment on the seabed was damaged and could no longer be harvested. Fishermen

housing at the coastal area of Bumin Hamlet and three fish auction locations were even washed away by the sea, plus fishermen's damaged ponds around Karawang and Bekasi covering hundreds of hectares until now.

## **8. Witness Bona Beding**

- For the people of Lamalera, the sea is identical to mindset and culture. However, it is not as a case of switching from traditional catching to modern catching method but rather preserving tradition since such tradition covers all kinds of aspects: education, morals, character, value system and even religiosity. It is concerned not merely with the economic aspect as all must be started with customary rituals, from building the boat up to catching fish, all of which are conducted in rituals and tradition, especially after the Catholic Church came in, all things have been merged in the enculturation of the Catholic Church. This tradition has taken place since about ten centuries ago. A brief illustration concerning the attachment of customs and tradition to the sea is mainly in relation to whale catching, which is a ritual teaching about doing things honestly and wisely.

**[3.11]** Whereas in respect of the petition of the Petitioners *a quo*, the Government has presented oral and written statements fully set out in the Facts of the Case part of this decision, principally stating as follows:

1. The Petitioners have been erroneous in understanding the definition of global orientation as provided for in the consideration of sub-paragraph b of the Law *a quo* stating that: *“Whereas coastal areas and small islands have highly various potentials of natural resources which are very important for social, economic, cultural, environmental development and as state sovereignty support, and therefore they need to be managed in a sustainable manner and with global orientation, by taking account of the community’s aspiration and participation as well as the nation’s value system based on national legal norms”;*

According to the Government, the phrase “global orientation” means that the management of Indonesian coastal areas and small islands is related to coastal areas and small islands in other countries, where coastal area utilization in Indonesia is not based on the consideration that the aspect of environmental preservation will affect global life, and vice versa;

2. The Government does not agree to the assumption of the Petitioners that the Law *a quo* can lead privatization in a domain supposed to be controlled by the state. According to the mandate of the constitution, the utilization of coastal areas and small islands is basically used for the greatest welfare and prosperity of the people. As a follow-up, the state, in this matter (central/regional) Government controls coastal areas and small islands through the allocation of space in 4 (four) zones, namely General

Utilization Zone, Conservation Zone, Particular National Strategic Zone and Sea Lane. Meanwhile, the Coastal Water Area Concession (HP-3) is limited to the General Utilization Zone (except for public beach and seaport zone) and the Particular National Strategic Zone (*vide* Article 10 and Article 22 of the Law *a quo*);

3. Whereas the assumption of the Petitioners stating that the Law *a quo* does not protect vulnerable groups in coastal villages, according to the Government, is baseless and only based on the existence of assumptions alone, since in fact, the Law *a quo* on the contrary protects coastal communities (according to the opinion of Government, vulnerable groups of coastal villages are not recognized/do not exist, and it is not the regulation domain of the Law *a quo*), the Law *a quo* regulates, among other things, the provisions on community empowerment and community participation in the utilization of coastal areas (*vide* Article 60 up to Article 63 of the Law *a quo*);
4. The Government does not agree with the assumption of the Petitioners stating that the Law *a quo* may raise poverty issues and endanger state sovereignty in small islands. According to the Government, such assumption of the Petitioners is exaggerated and made up, since poverty issues are related not only to and do not occur only in coastal areas or small islands (General Elucidation point 3 sub-paragraph b of the Law *a quo*);

Whereas the Government does not agree with the Petitioners assuming that the Law *a quo* is not synchronized with other laws and regulations, according to the Government, the Law *a quo* and other sectoral Laws complement each other, for instance in relation to general mining, oil and gas, planology, fishery, forestry, environmental management, seafaring, natural resources conservation, Basic Agrarian Law, waters, tourism, trade, water resources, national planning and development system, arbitration and dispute settlement alternatives. Furthermore, according to the Government, if the assumption of the Petitioners is right, non-synchronization between the Law *a quo* and other laws and regulations does not mean that the Law *a quo* becomes unconstitutional or in other words, such matter is not a constitutionality issue with respect to the application of the Law *a quo*;

**[3.12]** Whereas In order to support its statement, the Government has presented 3 (three) Experts, namely **Ir. Abdon Nababan**, **Ir. Dietriech G. Bengen** and **Budi Wiryawan**, as well as a witness named **Much Imran Amin** whose statements have been heard at the hearing on June 8, 2010 and have been set out in the Facts of the Case part of this decision principally as follows:

**1. Expert Ir. Abdon Nababan**

- The main issue in the management of coastal areas and small islands is the tragedy of open access. The tragedy in coastal areas

and at sea is due to open access, allowed to be the regime controlling the sea. It is this fact that is intended to be addressed by Law 27/2007. One of the methods is recognizing the rights of customary communities, not only regarding the issue of right approach in area management, but also for ensuring that the Government has the footing in lower position, since foreign vessels might come in without supervision from anyone as it used to be in the past.

**2. Expert Ir. Dietrich G. Bengen,**

- The emerging issue is the existence of *common property* and *open access regime* characteristics of coastal areas and small islands, so that it is impossible to divide the existing coastal areas and the sea into plots. Another issue is the policy that remains sectoral, lack of integration among stakeholders creating great inefficiency in the effort of coastal area utilization. In order to reduce the aforementioned issues and to optimize the existing natural resources, management is required. In order to conduct this management, Law 27/2007 states that the management of coastal areas and small islands is aimed to protect, convert, rehabilitate, and utilize the natural resources of coastal areas and small islands in a sustainable manner. Law 27/2007 tries to harmonize the existing various utilization, as well as to strengthen the participation

of the community and Government Agencies in the management of coastal areas and small islands.

### **3. Expert Budi Wiryawan**

- Negative implications will occur if regions competes to exploit natural resources without considering the sustainable development principle. Therefore, it is necessary to have a Law regulating the management of coastal areas of the Republic of Indonesia in order to manage natural resources and environmental services in coastal areas. Institutionally, the establishment of the Sea Exploration Department provides a historical milestone for the management of resources of coastal areas.
- The keyword of the policy of *review* of Law 27/2007 is management, namely how to manage coastal areas and small islands. The management is performed based on sustainable programs, consistency, integration, legal certainty, partnership, even distribution, poor community, transparency, decentralization, accountability and justice.

### **4. Witness Much Imran Amin**

- So far, people have exploited coastal areas and small as they wish, prior to the enactment of Law No. 27/2007, without any responsibility for the environment, especially for local communities.



An case example is coral reef exploitation for trading purpose. It is extremely rare that a company is held responsible for rehabilitation after it has taken away coral reef in an area and to be socially responsible for the local community. Since there is no regulation for entrepreneurs to do that, for the entrepreneurs not to open or exploit the natural resources of coastal areas as they wish, the existing coastal areas can be accounted for. The essence of the HP-3 is as a tool for the community to be able to utilize this mechanism or tool as a filter or protector for local community from everything coming from parties outside the community, so that the community may reject it with this regulation.

**[3.13]** Whereas in regard to the petition of the Petitioners, the People's Legislative Assembly has given its written statement as completely set forth in the Facts of the Case part of this decision, principally as follows:

1. Whereas the Petitioners have been erroneous in understanding the definition of global orientation as provided for in the consideration of subparagraph b of the Law *a quo* stating, "*Whereas coastal areas and small islands have highly various potentials of natural resources which are very important for social, economic, cultural, environmental and state sovereignty support, and therefore they need to be managed in a sustainable manner and with global orientation, by taking account of the community's aspiration and participation as well as the nation's value*

*system based on national legal norms”;*

2. According to the People's Legislative Assembly, the phrase “**global orientation**” means that the management of Indonesian coastal areas and small islands is related to coastal areas and small islands in other countries, where coastal area utilization in Indonesia is not based on the consideration that the aspect of environmental preservation will affect global life, and vice versa;
3. Whereas the People's Legislative Assembly does not agree to the assumption of the Petitioners that the Law *a quo* can lead to privatization in a domain supposed to be controlled by the state;
4. Whereas the assumption of the Petitioners stating that the Law *a quo* does not protect vulnerable groups in coastal villages, according to the People's Legislative Assembly, is baseless and only based on the existence of assumptions alone, since in fact, the Law *a quo* on the contrary protects coastal communities, among other things, with the provisions of community empowerment and community participation in the utilization of coastal areas (*vide* Article 60 up to Article 63 of the Law *a quo*) in the Law *a quo*;
5. Whereas the People's Legislative Assembly does not agree to the assumption of the Petitioners stating that the Law *a quo* may raise poverty issues and endanger state sovereignty in small islands. According to the

People's Legislative Assembly, the assumption of such Petitioners is exaggerated and made up, since poverty issues are related not only to and do not occur only in coastal areas or small islands (General Elucidation point 3 sub-paragraph b of the Law *a quo*);

6. Whereas the People's Legislative Assembly does not agree with the Petitioners stating that Article 1 sub-article 4, Article 1 sub-article 7, Article 1 sub-article 18, Article 16 Paragraph (1), Article 23 Paragraphs (2) and (4) of Law 27/2007 have ambiguities and overlaps with other laws and regulations in the fields of forestry, mining and tourism eliminating the guarantee, protection and legal certainty for citizens, society, especially fishermen and coastal area inhabitants;
7. Whereas with respect to the argument of the Petitioners stating the role of local communities and the customary law communities is displaced due to the application of Law 27/2007, the People's Legislative Assembly views that the provisions of Law 27/2007 have accommodated the interest of the customary law communities;
8. Whereas in addition, the granting of the HP-3 has been regulated in the provision of Article 17 paragraph (2) of the Law *a quo* which principally regulates that the HP-3 granting must consider the interest of preservation of coastal areas and small islands ecosystem, the customary communities and national interest as well as the right of innocent passage for foreign vessels;

9. Whereas similarly, the provision of Article 60 paragraph (1) sub-paragraph b of the Law *a quo* has granted the right, obligation and participation to the community to obtain access to waters stipulated by the HP-3, including obtaining the benefit of the management of coastal areas and small islands, and some other rights which actually constitute the recognition and manifestation of protection for the community with respect to the activities of management of natural resources of coastal areas and small islands;
  
10. Whereas based on the explanation, the People's Legislative Assembly views that the provisions of Article 1 sub-article 4, Article 1 sub-article 7, Article 1 sub-article 18, Article 14 paragraph (1), Article 16 paragraphs (1) and (2), Article 20 paragraph (1), Article 23 paragraph (2), (4), (5) and (6) as well as Article 60 paragraph (1) sub-paragraph b of Law 27/2007 **are not inconsistent with** the provisions of Article 1 paragraph (3), Article 18B paragraph (2), Article 28A, Article 28C paragraph (2), Article 28D paragraph (1), Article 28E paragraphs (1) and (2), Article 28G paragraph (1), Article 28H paragraphs (2) and (3), Article 28I paragraph (2), as well as Article 33 paragraphs (1), (2) and (3) of the 1945 Constitution;

**[3.14]** Whereas the Petitioners and the Government have submitted written conclusions substantially consistent with their respective opinions;

### **The Court's Opinion**

**[3.15]** Considering whereas after the carefully examining the petition of the Petitioners, the statements of the Government and the People's Legislative Assembly, documentary evidence of the Petitioners (Exhibit P-1 up to Exhibit P-24), the statements of experts as well as the statements of witnesses, written conclusions of the Petitioners and the Government, as described above, the Court is of the following opinion:

**[3.15.1]** Whereas main problem that must be taken into account and decided upon by the Constitution in this case is concerned with constitutionality of Article 1 sub-articles 4, 7 and 18, Article 16 paragraphs (1) and (2), Article 14 paragraph (1), Article 18, Article 20, Article 21 paragraphs (1), (2), (3), (4) and (5), Article 23 paragraph (1), (2), (4), (5) and (6) as well as Article 60 paragraph (1) of Law 27/2007 argued to be inconsistent with twelve constitutional norms in the 1945 Constitution;

**[3.15.2]** Whereas based on the description of the arguments in the petition of the Petitioners, the statements of the Government and the People's Legislative Assembly as well as the legal facts revealed in the hearing, there are two constitutional issues that must be responded to by the Court, namely:

1. Whether the granting of the HP-3 is inconsistent with the principle of state control over natural resources for the greatest prosperity of the people, constitutional guarantee with respect to the right to life and to defend one's life for coastal communities, non-discrimination principle as well as fair

legal certainty principle as argued by the Petitioners;

2. Whether the preparation of RSWP-3-K (*Rencana Strategis Wilayah Pesisir dan Pulau-Pulau Kecil*//Strategic Plan for Coastal Areas and Small Islands), RZWP-3-K (*Rencana Zonasi Wilayah Pesisir dan Pulau-Pulau Kecil*//Zoning Plan for Coastal Areas and Small Islands), RPWP-3-K (*Rencana Pengelolaan Wilayah Pesisir dan Pulau-Pulau Kecil*//Management Plan for Coastal Areas and Small Islands), RAPWP-3-K (*Rencana Aksi Pengelolaan Wilayah Pesisir dan Pulau-Pulau Kecil*//Management Action Plan for Coastal Areas and Small Islands) not involving the community as participant in deliberations violates the constitutional rights of the Petitioners and thus inconsistent with constitution;

**[3.15.3]** Whereas before giving its legal considerations and evaluation of both constitutional issues on paragraph [3.15.2], the Court will first convey the following matters:

The Constitution needs to refer to the decision of Constitution Number 001, 021, 022/PUU-I/2003 dated December 15, 2004 principally considering that if the definition of the phrase “controlled by the state” is just interpreted as ownership in the civil (private) sense, it will not suffice to use the control to achieve the “greatest prosperity of the people”. Therefore the mandate to “promote public welfare” and to “implement social justice for all the people” stated in the Preamble of the 1945 Constitution will be impossible to realize.

Accordingly, expression control by the state must be must be interpreted to include the interpretation of control by the state in the broad sense which is based on the conception of the sovereignty of the Indonesian people over all of the resources consisting of the “land and water and natural resources contained therein”. Included in it is the interpretation of the collective public ownership by the people of the resources concerned. The people collectively are constructed by the 1945 Constitution as giving the mandate to the state to make policy (*beleid*) and perform the administration (*bestuursdad*), regulation (*regelendaad*), management (*beheersdaad*) and oversight (*toezichthoudensdaad*) with the purpose of the greatest prosperity of the people. The function of administration (*bestuursdaad*) by the state is carried out by the government with its authority to issue and 17revoke permit facilities (*vergunning*), licensing (*licentie*), and concession (*concessie*). The state’s regulatory function (*regelendaad*) is performed through the legislative authority of the People’s Legislative Assembly together with the government, and regulation by the government (*eksekutif*). The management function (*beheersdaad*) is performed through share holding mechanism and/or through direct involvement in the management of the State Enterprises as instruments through which the state c.q. the government will exercise its control over the natural resources for the greatest prosperity of the people.. Likewise, The function of oversight by the state (*toezichthoudensdaad*) is carried out by the state cq the government in the context of supervising and controlling so that the exercise of control by the state upon natural resources of land, waters will be performed for the greatest

prosperity of the people;

**[3.15.4]** Whereas Article 33 paragraph (3) of the 1945 Constitution provides that land and waters and the natural riches contained therein shall be controlled by the state. Based on such provision, according to the Court, coastal water areas and small islands as well as the natural resources contained therein are included as areas and natural riches controlled by the state. In other words, according to the Court, the state formulates policies, performs the regulation, administration, management and supervision of land, waters and the natural riches contained therein, including coastal water areas and small islands, all being intended for the greatest prosperity of the people. With the existence of the clause *“used for the greatest prosperity of the people”* in Article 33 paragraph (3) of the 1945 Constitution, the greatest prosperity of the people shall become the main standard for the state in determining the administration, regulation or management of land, waters and the natural riches contained therein. In addition, control by the state over land, waters and the natural riches contained therein must also observe the existing rights, either individual rights or collective rights possessed by customary law communities (*ulayat* right), the rights of customary communities as well as other constitutional rights possessed by the community and guaranteed by the constitution, for example the access right to pass, right to healthy environment, etc;

**[3.15.5]** Whereas according to the Court, in coastal water areas and small islands, there have been individual rights, customary law community rights as



well as traditional fishermen community right, business entity right or other community rights as well as the application of local wisdom, namely noble values that are still applicable in the social system. On the one hand, Article 61 of the Law *a quo* recognizes, respects and protects the rights of customary law communities, traditional communities and local wisdom for coastal areas and small islands that have been used from generation to generation and that have become a reference in the management of coastal areas and small islands, while on the other hand, the rights of such customary law/traditional communities and local wisdom are potentially transferable in the form of the HP-3 or surrendered to the private sector by way of compensation payment. Such matter will eliminate the rights of customary law/traditional communities that inherited from generation to generation, while the rights of the communities have certain characteristics, namely that they cannot be eliminated insofar as such customary law communities still exist. In addition, it will also cause the elimination of customary law/traditional communities in obtaining the HP-3, due to lack of capital, technology as well as knowledge. In fact, the state in this matter the government is obligated to advance public welfare and social justice for all the Indonesian people [*vide* the fourth paragraph of the Preamble to the 1945 Constitution and Article 34 paragraph (2) of the 1945 Constitution]. Article 10 of the Law *a quo* have also regulated the division of coastal water space and small islands into four zones, namely the public use zone, conservation zone, particular national strategy and sea lane. According to the Court, the division of coastal water zones and small islands in some zones intended for guaranteeing and protecting certain

regions that must be protected is a matter that needs to be regulated as stated in the Law *a quo*. The management of coastal areas and small islands must be conducted using an integrated approach (Integrated Coastal Zone Management), including, among other things, the sectors of fishery, transportation, tourism, mineral, environment, etc;

**[3.15.6]** Whereas the Court can understand the ideal objective of the formulation of the Law *a quo* as provided for in Article 4, namely to: (i) protect, conserve, rehabilitate, utilize and enrich the resources of coastal areas and small islands as well as their ecological system in a sustainable manner, (ii) create harmony and synergy between the Government and Regional Governments in the management of resources of coastal areas and small islands, as well as (iii) to strengthen the participation of the community and government agencies as well as to encourage the community's initiative in the management of resources of coastal areas and small islands so as to achieve justice, equality and sustainability. The Court may also accept the explanation of the Government that the formulation of the Law *a quo*, has been motivated by the awareness of the need for integrating and developing the synergy of various sectoral planning, handling overlapping management, conflicts of utilization and authority as well as giving legal certainty. However, the Court gives special attention to the statements of expert Abdon Nababan and Dietrich G Bengen (Expert of the Government), suggesting that the main problem in the management of coastal water areas and small islands is the tragedy of open access, namely a tragedy resulting from the use of open access principle for coastal areas and small

islands as well as the principle of common property for coastal areas and small islands causing not allowing for the division of existing coastal areas or sea into lots. According to the Court, if the statements of both experts are correct, it can be concluded that the intention of the formulation of this law is in the context of legalizing the division of coastal areas and small islands into lots to be used as private ownership and closed ownership to individuals, legal entities or certain communities, so that the largest portion of the management of coastal areas and small islands is surrendered to individuals, legal entities and community groups constructed according to the Law *a quo* with the granting of the HP-3. This means that there is the spirit of privatization of the management and utilization of coastal water areas and small islands to individual business and the private sector.

**[3.15.7]** Whereas according to the Court, the construction of the Law *a quo* has positioned the HP-3 as property right. This is reflected in the characteristics of the HP-3 contained in the Law *a quo*, namely that the HP-3: (i) is granted for a certain term, namely 20 years and can be continuously extended, (ii) is granted with a particular extent, (iii) transferable, can be transferred and made as debt security by with the imposition of security rights, (iv) granted with right certificate. Based on such characteristics, the granting of the HP-3 for coastal areas and small islands has transferred the ownership and control by the state in the form of single ownership and closed ownership to a person, a community group or a legal entity for a particular area of coastal areas and small islands, which can close access for every person to the area granted with the HP-3. The subsequent

consequence of the granting of the HP-3 is the division of coastal areas and small islands into lots throughout Indonesia except for conservation zone, fishery preservation, shipping lane, port zone and public beach, so that the state transfers its responsibility, control and the management of such areas to the owner of the HP-3. With the very wide range of governmental control, covering all areas of Indonesia, the transfer of such responsibility will be difficult for the state to control effectively, either for the management of coastal areas or small islands. Moreover, regions have different capabilities in respect of their aforementioned supervision. It is true that, according to the Law *a quo*, the granting of the HP-3 is limited only to particular zones, namely outside conservation zone, fishery preservation, shipping lane, port zone and public beach, however the problem is the extent of the percentage of division of such various areas is not confirmed in the Law *a quo*, so that it is very likely that most parts of Indonesian territory will be the regions of the HP-3. The granting of the HP-3 will also potentially endanger the position of the customary law communities and traditional fishermen depending existing resources in coastal waters and small islands for their life from generation to generation, due to their shortcomings to obtain the HP-3 compared to private entrepreneurs having everything. Furthermore, the absence of special treatment for customary law communities as well as traditional communities to obtain the HP-3, they are threatened with the loss of resources serving as their source of living;

**[3.15.8]** Whereas based on the foregoing description of the considerations, the Court will subsequently assess the constitutionality of HP-3 based on the

standard of Article 33 paragraph (3) of the 1945 Constitution. According to the Court, state's control over land and waters and the natural resources contained therein means that the state is authorized and given the liberty to control, make policies, manage as well as supervise the utilization of land and waters and the natural resources contained therein based on the constitutional standard, namely "*the greatest prosperity of the people*". In accordance with the provision of Article 33 paragraph (3) of the 1945 Constitution *a quo*, the state's liberty to control and make policies on land and waters and the natural resources contained therein is limited by the standard of "*the greatest prosperity of the people*". Therefore, the Constitution needs to assess to what extent the granting of the HP-3 will contribute the greatest prosperity of the people by using four standards, namely: (i) the utilization of natural resources for the people, (ii) the level of distribution of benefits from the natural resources for the people, (iii) the level of people's participation in determining the benefit of the natural resources, as well as (iv) respect for the rights of the people who from generation to generation benefit from natural resources;

- (i) In the event that the HP-3 for coastal areas and small islands is granted to the private sector according to the construction of the Law *a quo*, according to the Court, it is potential and can even be ensured that the largest portion of coastal areas and small islands will be controlled by private individuals or companies with capital intensive and high technology business. Such matter causes the loss of access and discretion as well as the loss of job for most of Indonesian people working as fishermen to earn

a livelihood in coastal waters. Although the Law *a quo* regulates the participation of the community to participate in determining the allocation of waters areas, the plan of utilization of coastal areas and small Islands, the granting of the HP-3 to the community with particular requirements as well as supervision by the community over the management of the HP-3, according to the Court, the control of coastal waters and small islands by the private sector will constantly benefit the holders of the HP-3 rather than the utilization obtained by the fishermen community with approximately lower education level and limited capital;

- (ii) Likewise, the even distribution level of the utilization of coastal waters and small islands among fishermen who depend on the utilization of resources of coastal waters and small island for their life will continue to decrease since it is ensured that such utilization will be increasingly concentrated on small groups of the community of the holders of the HP-3. According to the Court, the granting of the HP-3 may create indirect discrimination. Although seemingly neutral, , either in its criteria or in practice, a provision may result in loss for certain people, namely fishermen's community compared to strong capitalists. Since the capability and condition of traditional fishermen are not equal comparing to the capability and condition of strong capitalists in the competition for obtaining the right to the management coastal areas and small islands, indirect discrimination will occur causing loss to traditional fishermen;

- (iii) By the granting of the HP-3 to private sector, people participation level in determining natural resources benefit will keep decreasing because control over the HP-3 becomes under the control of the HP-3 holder. Although Law *a quo* provides the guarantee of community involvement in the zone planning of coastal waters area and small islands, the granting of the HP-3 to community group living in coastal area as well as community involvement in supervising coastal area management, according to the Constitution, such community participation is insufficient to guarantee, protect and fulfill community rights, instead, it is potential to remove the rights and active participation of community in the utilization of coastal waters and small islands;
  
- (iv) The granting of the HP-3 also threatens the existence of the rights of traditional communities and local wisdom of the communities in coastal areas and small islands, because according to the concept of the Law *a quo*, traditional communities having right to utilize coastal waters and small islands from generation to generation will be granted the HP-3, and may receive compensation for the granting of the HP-3 to the private sector based on deliberation agreement. According to the Court, such concept will restrict the rights of traditional communities within particular time frame according to the provision on the granting of the HP-3, namely 20 years and which can be extended. This concept is inconsistent with the concept of communal right and the community's traditional rights which cannot be restricted since the benefit can be enjoyed from generation to

generation. Similarly, the concept of compensation for the community having traditional rights to coastal areas and small islands will also eliminate traditional community's rights, the benefit of which is supposed to be enjoyed from generation to generation (just saving principle), since such compensation can causes the benefits of such right to be enjoyed only by the people receiving indemnity at that time. This is also inconsistent with the principle of traditional rights applicable from generation to generation, which according to the Court, is inconsistent with the essence of Article 18B of the 1945 Constitution recognizing and respecting the units of the customary law community along with their rights. In addition to that, the concept of the HP-3 may eliminate the opportunity for customary law communities and traditional communities depending on coastal areas and small islands for their life and it is therefore inconsistent with Article 28A of the 1945 Constitution;

**[3.15.9]** Whereas Article 33 paragraph (4) of the 1945 Constitution stating that “The national economy shall be organized based on economic democracy with the principles of togetherness, efficiency with justice, sustainable and environmentally insight, independence and by keeping a balance between progress and unity of national economy”. The management of coastal areas and small islands as economic resources for the interest of the Indonesian people and nation is part of the administration of the national economy which must take the constitutional mandate and spirit into account. According to the Court, the granting of the HP-3 violates the principle of economic democracy based on the



principle of togetherness and fair efficiency. The principle of togetherness must be interpreted in such a way that economic administration including the management of natural resources for economic benefit, must involve the people to the greatest possible extent and shall be profitable for the people's prosperity in general. The management of natural resources cannot merely take efficiency principle into account to obtain maximum results which can benefit small groups of capitalists, however, it must be able to improve the people's prosperity in a fair manner. The utilization of coastal areas and small islands by the granting the HP-3 as explained above will cause coastal water areas and small islands serving as the area of the HP-3 to be controlled by large capitalists. On the contrary, traditional fishermen's community mostly living in coastal areas and small islands and depending on coastal resources for their life will be expelled. Under such condition, the state has neglected the performance of its responsibility to organize the national economy which provides protection and justice to the people. Moreover, according to the Court, the granting of the HP-3 will violate the principle of social justice for all Indonesia people as intended in the fourth paragraph of the Preamble to the 1945 Constitution;

**[3.15.10]** Whereas based on the foregoing explanation, according to the Court, the granting of the HP-3 as regulated in Article 16, Article 17, Article 18, Article 19, Article 20, Article 21, Article 22, Article 23 paragraphs (4) and (5), Article 50, Article 51, Article 60 paragraph (1), Article 71 as well as Article 75 of Law 27/2007 is inconsistent with the 1945 Constitution. According to the Court, the management of coastal areas and small islands for the purpose to: (i) protect,

conserve, rehabilitate, use and enrich the resources of coastal areas and small islands as well as its ecological system in a sustainable manner, (ii) create harmony and synergy between the Government and Regional Governments in the management of resources of coastal areas and small islands, as well as (iii) strengthen the participation of the community and government agencies as well as to encourage the initiative of the community in the management of resources of coastal areas and small islands in order to achieve justice, balance and sustainability cannot be performed by granting the HP-3 for reason as explained above. According to the Court, to prevent the transfer of responsibility of state's control over the management of coastal waters and small islands to private parties, the state may grant right of such management through permit mechanism. The granting of permission to such private parties may not be interpreted to reduce the state's authority of policy making (*beleid*), regulation (*regelendaad*), administration (*bestuursdaad*), management (*beheersdaad*) and supervision (*toezichthoudensdaad*) for the purpose of the greatest prosperity of the people. In addition, the state is still allowed to fully control and supervise the management of coastal water areas and small islands. Through permit mechanism, the granting of management right to private parties does not constitute the granting of property right transferring state control completely to private parties within a certain time frame. Accordingly, coastal water areas and small islands still can be managed in integrated and will create synergy of various sectoral planning, overcome overlapping management, disputes in the utilization and authority as well as provide legal certainty;

**[3.15.11]** Whereas although the Petitioners only petition for judicial review for Article 1 sub-articles 4, 7 and 18, Article 16 paragraph (1), Article 23 paragraphs (2) and (4), Article 14 paragraph (1), Article 16 paragraphs (1) and (2), Article 20 paragraph (1), Article 23 paragraphs (4), (5) and (6), Article 60 paragraph (1) sub-paragraph b of the Law *a quo*, since legal considerations have been given with respect to such HP-3 as described above, such legal considerations also apply to other provisions related to the HP-3, although not petitioned for judicial review by the Petitioners;

**[3.15.12]** Whereas the Court will subsequently conduct further assessment of other articles of the Law *a quo* petitioned for review by the Petitioners, namely as follows:

1. With respect to the review of the provision of Article 1 sub-articles 4 and 7 of Law 27/2007, according to the Court, the norm is regulated in the General Provision, containing the definitions, abbreviations or acronyms used in the regulation, and other matters generally applicable to the consequent articles, namely among other things, provisions reflecting the principle, purpose and objective [vide appendix C.1. 74 of Law Number 10 Year 2004 concerning the Formulation of Laws and Regulations (State Gazette of the Republic of Indonesia Year 2004 Number 53, Supplement to the State Gazette of the Republic of Indonesia Number 4389)]. The General Provision section in laws and regulations is intended for the meaning or definitions, abbreviations or acronyms serving the function to

explain the meaning of a word or a term certainly must be formulated in such a way so that it does not create ambiguous definitions (vide Appendix C.1. 81 of Law Number 10 Year 2004 concerning the Formulation of Laws and Regulations). According to the Court, the formulation of Article 1 sub-articles 4 and 7 of Law 27/2007 is a neutral definition formulation so that it does not have any legal meaning without being connected to the provisions of the related articles. Therefore, there is no constitutionality issue in the provision *a quo*. The provision of Article 1 sub-article 18 has been considered together with the Court's considerations on the review concerning the HP-3;

2. Considering the review of the provision of Article 14 paragraph (1) of the Law *a quo*, which according the Petitioners, contains discriminatory treatment weakening the community's bargaining position with bad implication in community life, the Constitution is of the following opinion:

The norm of the article *a quo* shows that in the preparation of the strategic plan, zoning plan, management plan and action plan of the management of coastal areas and small islands is only conducted by Regional Government and business circles, thus decreasing the access of community's involvement, especially local and traditional communities. Although the community is involved in the dissemination and public hearing, such position will greatly weaken the position of the compared to the Regional Government and business circles. Article 14 paragraph (1) of the Law *a quo* will at least give rise to two issues.

*Firstly*, the repression of the community's right to participate give suggestions proposal, so that the community does not have any option to reject or receive such plan; *Secondly*, a policy not based on public participation will potentially lead to the violation of public rights in the future, namely the ignorance of the community's rights inherent in the related areas, while the local community knows and understands the condition of the area. According to the Court, the proposal presentation only involving the government and business circles is a form of unequal treatment among citizens and ignorance of the rights of the community to develop themselves and to fight for their right collectively to develop their community, nation and state inconsistent with Article 27, Article 28C paragraph (2) and Article 28D paragraph (3) of the 1945 Constitution.

**[3.15.13]** Whereas in order to prevent misunderstanding and doubt causing the absence of legal certainty with respect to the regulation of coastal areas and small islands, it is necessary to assert that in accordance with Article 58 of the Constitutional Court Law, a Decision of the Constitutional Court has legal effect following its pronouncement and shall be applicable prospectively rather than retroactively. Therefore, all agreements or contracts and business licenses in the field of management of coastal areas and small islands which have been signed and issued based on Law 27/2007 shall survive until such agreements or contracts and business licenses expire or become no longer applicable;

#### **4. CONCLUSION**

Based on the assessment of the facts and law as described above, the Court

concludes as follows:

**[4.1]** The Constitution has authority to examine, hear and decide upon the petition *a quo*;

**[4.2]** The Petitioners have legal standing to file the petition *a quo*;

**[4.3]** The Petition of the Petitioners insofar as concerned with the HP-3 and the process of management of coastal areas and small islands not involving the community as a party in deliberations has legal basis;

Based on the 1945 Constitution and in view of Article 57 paragraphs (1) and (3) of Law Number 24 Year 2003 concerning 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) and Law Number 49 Year 2009 concerning Judicial Power (State Gazette of the Republic of Indonesia Year 2009 Number 157, Supplement to State Gazette Number 5076);

## **5. ORDERS OF DECISION**

### **Passing the decision**

Declaring:

- Granting the petition of the Petitioners partly;
- Declaring **Article 1 sub-article 18, Article 16, Article 17, Article 18, Article 19, Article 20, Article 21, Article 22, Article 23 paragraphs (4)**

- and (5), Article 50, Article 51, Article 60 paragraph (1), Article 71 as well as Article 75** of Law Number 27 Year 2007 concerning the Management of Coastal Areas and Small Islands (State Gazette of the Republic of Indonesia Year 2007 Number 84, Supplement to the State Gazette of the Republic of Indonesia Number 4739) inconsistent with the 1945 Constitution;
- Declaring that **Article 1 sub-article 18, Article 16, Article 17, Article 18, Article 19, Article 20, Article 21, Article 22, Article 23 paragraphs (4) and (5), Article 50, Article 51, Article 60 paragraph (1), Article 71 as well as Article 75** of Law Number 27 Year 2007 concerning the Management of Coastal Areas and Small Islands (State Gazette of the Republic of Indonesia Year 2007 Number 84, Supplement to the State Gazette of the Republic of Indonesia Number 4739) have no binding power;
  - Ordering the publication of this Decision properly in the Official Gazette by no later than 30 business days as of the pronouncement of this Decision;
  - Declaring to reject the remaining petition of the Petitioners;

In witness whereof, this decision was made in the Consultative Meeting of Justices by nine Constitutional Court Justices on Thursday, the ninth of June two thousand and eleven, namely by Moh. Mahfud MD., as the Chairperson and concurrent Member, Achmad Sodiki, Ahmad Fadlil Sumadi, Hamdan Zoelva,

Anwar Usman, Harjono, Maria Farida Indrati, M. Akil Mochtar and Muhammad Alim, respectively as Members, and was pronounced in the Plenary Meeting of the Constitutional Court open to the public on Thursday, the sixteenth of June two thousand and eleven, by seven Constitutional Court Justices, namely Moh. Mahfud MD., as the Chairperson and concurrent Member, Achmad Sodiki, Ahmad Fadlil Sumadi, Hamdan Zoelva, Anwar Usman, Maria Farida Indrati and Muhammad Alim, respectively as Members, in the presence of Fadzlun Budi SN. as Substitute Registrar, assisted by the Petitioners/Attorneys, the Government or its Representative and the People's Legislative Assembly or its Representative.

**CHAIRPERSON,**

**[signed]**

**Moh. Mahfud MD.**

**MEMBERS,**

**Achmad Sodiki**

**Ahmad Fadlil Sumadi**

**Hamdan Zoelva**

**Anwar Usman**

**Harjono**

**Maria Farida Indrati**



**M. Akil Mochtar**

**Muhammad Alim**

**SUBSTITUTE REGISTRAR,**

**[signed]**

**Fadzlun Budi S.N.**

The Copy of this Decision is valid and in accordance with the original published to the public based on Article 14 of Law Number 24 Year 2003 regarding the Constitutional Court.

Jakarta, June 16, 2011



**Kasianur Sidauruk**

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