



## DECISION

Case Number 003/PUU-III/2005

**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 a case of petition for Substantive and Formal Review of Law Number 19 Year 2004 regarding Stipulation of Government Regulation Number 1 Year 2004 regarding Amendment to Law Number 41 Year 1999 regarding Forestry into a Law against the 1945 Constitution filed by:

1. Name : INDRO SUGIANTO, SH, M.H,  
Occupation : Executive Director of ICEL (Indonesian Center for Environmental Law)  
Address : Jl. Dempo II no.21 Kebayoran Baru, South Jakarta 12120;
  
2. Name : SANDRA MONIAGA, S.H ,  
Occupation : Executive Coordinator of HuMA (*Perkumpulan Pembaharuan Hukum berbasis Masyarakat dan*

*Ekologis*, Association for Community - and Ecology-based Legal Reform)

- Address : Jl. Jati Mulya IV No. 21, Jati Padang, Pasar Minggu, South Jakarta 12540;
3. Name : N.M. WAHYU KUNCORO, SH,  
Occupation : Chairman of LASA (Lembaga Advokasi Satwa, *Animal Advocacy Institute*)  
Address : Jl Cendrawasih 5 No. 7 Kompleks Deplu - Fatmawati, South Jakarta;
4. Names : LONGGENA GINTING; JOKO WALUYO; ANGGIARINI; NUR HIDAYATI; MUHAMMAD BASUKI WINOTO; BUDI ARIANTO;,  
Occupations : Chairman, Vice Chairman, Treasurer, Secretary and Members of the Daily Affairs Managing Board, WALHI FOUNDATION (INSONESIAN FORUM FOR ENVIRONMENT),  
Address : Jl. Tegalparang Raya Utara No. 14, Jakarta 12790;
5. Name : EMILIANUS OLA KLEDEN,  
Occupation : Executive Secretary of the Aliansi Masyarakat Adat Nusantara (Alliance of Nusantara Customary Communities AMAN),

- Address : Jl. B no.4 RT 01/ RW 06, Komp. Rawa Bambu I,  
Pasar Minggu – South Jakarta;
6. Name : IFDHAL KASIM, S.H,  
Occupation : Executive Director of ELSAM (Institute for Policy  
Research and Advocacy),  
Address : Jl. Siaga II No 31, Pasar Minggu, Jakarta 12510;
7. Name : TEJO WAHJU JATMIKO,  
Occupation : Executive Director of KONPHALINDO (National  
Consorsium for Indonesian Forest and Nature  
Preservation),  
Address : Jl. Kelapa Hijau no.99 Jagakarsa – South Jakarta;
8. Name : ABDON NABABAN,  
Occupation : Chairman of the Managing Board of *Perkumpulan  
Telapak*  
Address : Jl. Palem Putri III no. 1, TAMAN Yasmin sector V,  
Bogor;
9. Name : Drs. ARIEF BUDIMAN,  
Occupation : Chairman of the ex officio Managing Board of Rapid  
Agrarian Conflict Apprasial Institute (RACA Institute)  
Foundation,

- Address : Jl. Rasamala VIII no.24 Kel. Menteng Dalam – South  
Jakarta;
10. Name : MUNARMAN, S.H. ,  
Occupation : Chairman of the Managing Board of YLBHI  
(foundation of the Indonesian Legal Aid Institute)  
Address : Jl. Diponegoro No. 74, Jakarta 10320;
11. Name : SAIFUL SUDIN, S.Pi ,  
Occupation : Executive Director of Evergreen Indonesia  
Association  
Address : Jl. Cemara II no. 8 , Palu 94226, Central Sulawesi;
12. Name : Bartho Lombote  
Occupation : Farmer  
Address : Dum-Dum Village, Jailolo District, West Halmahera,  
North Maluku;
13. Name : Delila  
Occupation : Farmer  
Address : Dum-Dum Village, Jailolo District, West Halmahera,  
North Maluku;
14. Name : Yustus Tangkea  
Occupation : Farmer

- Address : Dum-Dum Village, Jailolo District, West Halmahera,  
North Maluku;
15. Name : Yordan Gonyowo  
Occupation : Farmer  
Address : Dum - Dum Village, Jailolo District, West Halmahera,  
North Maluku;
16. Name : Petrus Kakale  
Occupation : Farmer  
Address : Dum - Dum Village, Jailolo District, West Halmahera,  
North Maluku;
17. Name : Obetnego Kotong  
Occupation : Farmer  
Address : Dum - Dum Village, Jailolo District, West Halmahera,  
North Maluku;
18. Name : Naomi Karu  
Occupation : Farmer  
Address : Dum - Dum Village, Jailolo District, West Halmahera,  
North Maluku;
19. Name : Melaki Sekola  
Occupation : Farmer

- Address : Dum - Dum Village, Jailolo District, West Halmahera,  
North Maluku;
20. Name : Laban Redi  
Occupation : Farmer  
Address : Dum - Dum Village, Jailolo District, West Halmahera,  
North Maluku;
21. Name : Herman Gunyowo  
Occupation : Farmer  
Address : Dum - Dum Village, Jailolo District, West Halmahera,  
North Maluku;
22. Name : Agus Toni  
Occupation : Mountain climber  
Address : Jl. Blora No. 26.B, RT.001, RW.002, Segalamider,  
West Tanjung Karang, Bandar Lampung, 35152;
23. Name : Henny Kurniasih  
Occupation : College Student  
Address : Jl. Batubara, G. Akasia, No.44, RT 001, RW 001,  
North Teluk Betung, Bandar Lampung, 35212;
24. Name : Jupriah  
Occupation : Housewife

- Address : Way Sembung, RT/RW 04/02, Hurun, Padang Cermin;-
25. Name : Adi Santosa  
Occupation : Air Force  
Address : Jl. Dr. Sam Ratulangie No. 36 LK.3, RT 002, RW 002, Penengahan, Central Tanjung Karang, Bandar Lampung, 35112;
26. Name : Hendra Darmawan, ST  
Occupation : Entrepreneur  
Address : Jl. Alam Hijau Blok R No 18, Way Halim Permai, Sukarame, Bandar Lampung, 35135;
27. Name : Masni  
Occupation : Housewife  
Address : Way Tabuh, RT/RW 03/02, Hurun, Padang Cermin;
28. Name : Lislita Sarifana  
Occupation : Entrepreneur  
Address : Jl. Purnawirawan Umbul Salak, RT.002, RW.002, Langkapura, Kemiling, Bandar Lampung, 35154;
29. Name : Siti Amina  
Occupation : Housewife  
Address : Muara Tiga, RT/RW 02/01, Hurun, Padang Cermin;

30. Name : Indiniah Sulastri  
Occupation : Housewife  
Address : Jl. Siliwangi, RT/RW 01/01, Hanura, Padang Cermin;
31. Name : Hendri AS  
Occupation : Entrepreneur  
Address : Jl. M. Nur. Jayapura LK. 7, RT 001, RW 002,  
Kedaton, Bandar Lampung, 35141;
32. Name : Leni Oktaviana  
Occupation : College Student  
Address : Ds.I, Kedaleman, Talangpadang, Tanggamus;
33. Name : Mujiyati  
Occupation : Housewife  
Address : Jl. Siliwangi, RT/RW 01/01, Hanura, Padang Cermin;
34. Name : Nina Herlina  
Occupation : Housewife  
Address : Jl. Siliwangi, RT/RW 01/01, Hanura, Padang Cermin;
35. Name : Mukri Friatna  
Occupation : Farmhand



- Address : Jl. Duku No.18 LK.IV, RT 002, RW 002, Pasir  
Gintung, Central Tanjung Karang, Bandar Lampung,  
35113;
36. Name : Puspita Dewi  
Occupation : Self-employed  
Address : Dusun A, RT 01, RW 01, Hanura, Padangcermin,  
South Lampung;
37. Name : Surtinah  
Occupation : Unemployed  
Address : Way Tabu, RT/RW 001/01, Hurun, Padang Cermin;
38. Name : Ariana Suciati  
Occupation : Student  
Address : Sumber Urip, RT 037, RW 009, Sidorejo, Sekampung  
Udik, East Lampung;
39. Name : Hamzah Pansuri  
Occupation : Farmer  
Address : Damarkaca, RT 001 RW 001, Hurun, Padangcermin,  
South Lampung;
40. Name : Nursih Bin Nafsin  
Occupation : Farmer

- Address : Kampung Way Tabu, RT 001, RW01, Hurun, South Lampung;
41. Name : Bustar Maitar  
Occupation : Self-empoyed  
Address : Jl. Trikora, Kota Dingin, RT 04, RW 07, Wosi, Manokwari;
42. Name : Mansur Lombonaung  
Occupation : Fisherman  
Address : Jaga VI, Ratatotok Timur, Belang, Bolaang Mongondow;
43. Name : Pitres Sombowadile  
Occupation : Journalist  
Address : Buha, Lingk.II, Buha, Mapangat, Manado;
44. Name : Syafrudin Wangko  
Occupation : Entrepreneur  
Address : Jaga IV, Ratatotok II, Ratatotok, South Minahasa;
45. Name : Rasid Rahmat  
Occupation : Fisherman  
Address : Buyat Pantai, Jaga IV, Buyat, Kotabunan, Bolaang, Mongondow;

46. Name : DR. Ir. Rignolda Djamaludin  
Occupation : University Lecturer  
Address : Lingkungan II, RT 04, RW 02, Kleak, Malalayang,  
Manado;
47. Name : Anwar Stirman  
Occupation : Self-employed  
Address : Buyat Pantai, Jaga VI, Buyat, Kotabunan, Bolaang  
Mongondow;
48. Name : Ellen Pitoi  
Occupation : Self-employed  
Address : Ratatotok I, Jaga IV, RatatotokII, Ratatotok, South  
Minahasa;
49. Name : Dodoth Wahyudi  
Occupation : College Student  
Address : Jl Garuda no.67., Banjar Baru – South Kalimantan;
50. Name : Bahrudin  
Occupation : Self-employed  
Address : Jl. Bukhari RT 01 RW I, Awangan kanan Sub-District,  
Kandangan, East Hulu Sungai Regency, South  
Kalimantan;
51. Name : Deni Mujiati

- Occupation : College Student  
Address : Jl Veteran, Komp. Gg. Mekar Indah RT 022 Sungai Lulut Sub-District, East Banjarmasin District – Banjarmasin – South Kalimantan;
52. Name : Deddy Ratih  
Occupation : NGO Activist  
Address : I Garuda no. 67 Banjar Baru , South Kalimantan;
53. Name : Budi Lesmana  
Occupation : Self-employed  
Address : Jln H. Saberani Eft. RT 03 no. 18, Sei Malang Sub-District, Central Amuntai District – Hulu Sungai Utara Regency, South Kalimantan;
54. Name : Noorbek  
Occupation : Farmer  
Address : Desa Langkap RW I, Awayan District, Hulu Sungai Utara Regency - South Kalimantan;
55. Name : Aliyudar  
Occupation : Farmer  
Address : Iyam Dayak Pitap RT II, Awayan District, Hulu Sungai Utara Regency;
56. Name : Gt Noordin Iman

- Occupation : NGO Activist  
Address : Jl Batuah no.06 RT/RW 002/003, Jawa Sub-District,  
Martapura District, Banjar Regency - South  
Kalimantan;
57. Name : Ari Zulutfi  
Occupation : NGO Activist  
Address : Jl Batu Terapu no. 66, Komp. Amaco Banjar Baru,  
South Kalimantan;
58. Name : Abdurahim  
Occupation : College Student  
Address : Komp. Permata Hijau Blok. D no.3, Teluk Palinget  
Sub-District – Pulau petak District, Kapuas Regency –  
South Kalimantan;
59. Name : Jaharudin  
Occupation : Self-employed  
Address : Lekok Selatan, RT 002 /RW 000b, Gondang Village,  
Gangga District, West Lombok Regency – West Nusa  
Tenggara;
60. Name : Hermawan  
Occupation : College Student

- Address : Jl. Tambora no.12 Mataram, Dasa Agung Sub-District, Mataram – West Nusa Tenggara;
61. Name : Qari Baladewa, SPT  
Occupation : Self-employed  
Address : Jl. Pemuda 3 B Gomong Lama RT 04/01, West Mataram Sub-District, Mataram District – Mataram Municipality, West Nusa Tenggara;
62. Name : Achmad Chairul Anwar  
Occupation : Student  
Address : Ujung Menteng, RT 002, RW 002, Ujung Menteng, Cakung, East Jakarta;
63. Name : Adi Widyanto  
Occupation : College Student  
Address : Sekarjalak, RT 02, RW 01, Margoyoso, Pati;
64. Name : Ahmad Supiani  
Occupation : -  
Address : Pejompongan Raya, RT 004, RW 006, Bendungan Hilir, Tanah Abang, Central Jakarta;
65. Name : Aminuddin  
Occupation : Self-employed

- Address : Jl. Jeruk 287, RT 001, RW 001, Guluh, Maospati,  
Magetan, 63392;
66. Name : Andri Wijaya  
Occupation : Entrepreneur  
Address : Jl. Blora No. 26. B, RT 001, RW 002, Segalaminder,  
West Tanjung Karang, Bandar Lampung, 35152;
67. Name : Hairuddin  
Occupation : College Student  
Address : KP. Kademangan, RT 005, RW 002, Kademangan,  
Cisauk, Tangerang;
68. Name : Halid Muhammad  
Occupation : Social Worker  
Address : KP. Pertanian Selt, RT 014, RW 003, Klender, Duren  
Sawit, East Jakarta;
69. Name : Hening Purwanti  
Occupation : Employee  
Address : KP. Kapitan, RT 014, RW 004, Klender, Duren Sawit,  
East Jakarta;
70. Name : Prakarma Raja S  
Occupation : Employee

- Address : Komp. Puspitek III-B/26, RT 021, RW 006, Setu,  
Cisauk, Tangerang;
71. Name : Siti Maemunah  
Occupation : Entrepreneur  
Address : Jl. Tegal Parang Utara no. 33A, RT 002, RW 004,  
Mampang, South Jakarta;
72. Name : Ade Cholik Mutaqin  
Occupation : College Student  
Address : Kp.Bubulak No.15F RT/RW 08/09, Tanjung Pura Sub-  
District, Karawang District, Karawang Regency;
73. Name : Eva Solihah  
Occupation : College Student  
Address : Kp. Baru RT/RW 03/02, Cileungsi Sub-District,  
Cileungsi District, Bogor Regency;
74. Name : Tommy Latuperisa  
Occupation : College Student  
Address : Jl Halim Perdana Kusuma no. 32, Batuceper  
Tangerang – Banten;
75. Name : Chandra Andriansyah  
Occupation : College Student



- Address : Jl. Danau Singkarak raya no. 12, Perumnas II  
Tangerang – Banten;
76. Name : D Handini  
Occupation : College Student  
Address : Jl. Terusan Arjuna,tol Tomang, Kebon Jeruk, West  
Jakarta;
77. Name : Fiqih Fajrian  
Occupation : College Student  
Address : Jl. H. Jamhari Raya RT 14 RW 1, Angke Sub-District,  
Tambora District, North Jakarta;
78. Name : Riki Novanta  
Occupation : College Student  
Address : Jl pajajaran Raya no.66 RT/RW 03/22, Bencongan  
Sub-District, Curug District –Tangerang Regency –  
Banten;
79. Name : M. Syaikhul Islam  
Occupation : College Student  
Address : Jl. Cendrawasih Raya C 59, Pinang Griya – Pinang  
Tangerang – West Java;
80. Name : Dandy K  
Occupation : College Student

- Address : Perumahan Taman Pinang Indah A/12, Cipondoh  
Tangerang;
81. Name : Heru Saputra  
Occupation : College Student  
Address : Kp. Guji RT/RW 004/002, Duri Kepa Kebon Jeruk –  
West Jakarta;
82. Name : Indrea Sitia  
Occupation : College Student  
Address : JL. Kartini XIII Fajar 9 no.26, Central Jakarta;
83. Name : Diah Kuntarti  
Occupation : College Student  
Address : JL. Serdang Baru 12 No. 15 RT 13 RW 005, Serdang  
Sub-District, Kemayoran, Central Jakarta;
84. Name : Inggit NS  
Occupation : College Student  
Address : Jl Pelopor IV 5 RT/RW 06/05, Tegal Arum Sub-  
District, Kalideras, West Jakarta;
85. Name : Aditinata  
Occupation : College Student  
Address : Kemandoran I Jl. Pub Mawar no. 4, South Jakarta;

86. Name : R. Agung Catur Irianto  
Occupation : College Student  
Address : KP. Duku RT 009/RW 005 – Kebayoran Lama, South Jakarta;
87. Name : Rima Metalia  
Occupation : College Student  
Address : Jl. Ki Fatoni no. 56 RT 02/RW 07, Cimuncang Sub-District, Serang;
88. Name : Didin Machmudin  
Occupation : College Student  
Address : Kp. Makasar RT 010 / RW 003, Makasar Sub-District, East Jakarta;
89. Name : Liana Sari  
Occupation : College Student  
Address : Jl Persima Raya Gg. 5 no 1 RT014/08, West Jakarta;
90. Name : Adi Riyanto  
Occupation : College Student  
Address : Kerendang RT 008 /005 , Tambora West Jakarta;
91. Name : Rudi Tampubolon  
Occupation : College Student  
Address : Jl. Menteng Trenggulun no. 31, Jakarta - 10310;

92. Name : Octavianto  
Occupation : College Student  
Address : Kp. Rawa Burung RT 03/RW 03, Kosambi –  
Tangerang;

In this matter represented by the Advocate Team acting as their Attorneys:

A.H. Semendawai, SH, LLM.	Jewelina Punduh, SH.
A. Patramijaya, S.H., LL.M.	Kurniawan Adi Nugroho, SH.
Andiko, SH.	NM. Wahyu Kuncoro, S.H
Asfinawati, SH.	Nurkholis Hidayat, S.H
Bernadinus Steni, SH.	Patria Palgunadi, S.H
Chairil Syah, SH.	Poltak Ike Wibowo, SH.
Daniel Panjaitan, SH. LLM.	Retno S, S.H
Dede Nurdin Sadat, SH.	Rino Subagyo, S.H.
Dyah Paramita, SH.	Susilaningtyas, SH.
Erna Ratnaningsih, SH.	Sulistiono, SH.
Fatmawati Djugo, S.H.	Supriyadi W. Eddyono, SH.
Henri Subagiyo, SH.	Tubagus Haryo K. SH.
Hermawanto, SH.	Uli Parulian Sihombing, SH.
Horas Siringo-ringo, SH.	Vincent Edwin Hasjim, S.H., M.H.
Ines Thioren S, SH.	Wahyu Wagiman, SH.
Ivan Valentina Ageung, SH.	
Isna Hertati, SH	

All of whom being Advocates/General Attorneys united under the Advocacy Team to Save the Protected Forest (TAPHL), who agreed to elect their legal domicile at Jl. Dempo II No. 21 Kebayoran Baru South Jakarta 12120, in this matter acting either jointly or individually under a special power of attorney, hereinafter referred to as Petitioners;

Having read the petition of the Petitioners;

Having heard the Statements of the Petitioners;

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

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

Having heard the statements of Witnesses and Experts of the Related Parties;

Having read the written statement of Petitioners;

Having read the written statements of the Government and the People's Legislative Assembly of the Republic of Indonesia;

Having read the written statement of the Related Parties;

Having examined the evidence;

### **LEGAL CONSIDERATIONS**

Considering whereas the purpose and objective of the petition of the *a quo* Petitioners are as mentioned above;

Considering whereas prior to examining the substance or the principal issue of the case, the Court needs to first take the following matters into account:

1. The authority of the Court to examine, hear and decide upon the petition of the Petitioners;
2. The legal standing of the Petitioners to file the *a quo* petition;

In respect of the above mentioned two issues, the Court is of the following opinion:

#### **1. Authorities of the Court**

Considering whereas pursuant to the provision of Article 24C Paragraph (1) of the 1945 Constitution of the State of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) in conjunction with Article 10 Paragraph (1) Sub-Paragraph a and Article 51 Paragraph (3) of the Law of the Republic of Indonesia Number 24 Year 2003 regarding the Constitutional Court [State Gazette of the Republic of Indonesia Year 2003 Number 98, Supplement to the State Gazette of the Republic of Indonesia Number 4316 (hereinafter referred to as the Constitutional Court Law)], one of the authorities of the Court is to conduct judicial review of laws against the 1945 Constitution, in terms of either their formulation process (formal review) or substance (substantive review);

Considering whereas the *a quo* petition pertains to the review of the Law of the Republic of Indonesia Number 19 Year 2004 regarding the Stipulation of Government Regulation in lieu of Law Number 1 Year 2004 regarding Amendment to Law Number 41 Year 1999 regarding Forestry into Law (State Gazette of the Republic of Indonesia Year 2004 Number 29, Supplement to State Gazette of the Republic of Indonesia Number 4374), hereinafter referred to as Law Number 19 Year 2004, both formal review and substantive review, therefore the Court has the authority to hear at the first and final level whose decision shall be final with respect to the *a quo* petition;

## **2. Legal Standing of the Petitioner**

Considering whereas pursuant to the provision of Article 51 Paragraph (1) of the Constitutional Court Law, the petitioner in the judicial review of a law against the 1945 Constitution shall be a party who assumes that his constitutional rights and/or authorities have been impaired by the coming into effect of a law, namely: a) an individual Indonesian citizen (including groups of individuals having a common interest); b) a customary law community unit insofar as it is still in existence and in accordance with to the development of the community and the principle of the Unitary State of the Republic of Indonesia as regulated in law; c) a public or private legal entity; or d) a state institution;

Considering whereas in its Decisions for Case Number 006/PUU-III/2005 and Case Number 010/PUU-III/2005 the Court has been of the opinion that the constitutional impairment which arose due to the coming into effect of a law pursuant to Article 51 Paragraph (1) of the Law regarding must fulfill five (5) requirements, namely:

- a. The Petitioner shall have constitutional rights granted by the 1945 Constitution;
- b. said the Petitioner believes that their constitutional rights have been impaired by the law under review;
- c. The impairment of such constitutional rights of the Petitioner shall be specific and actual in nature or at least potential in nature which, based on logical reasoning, can be ascertained to occur;
- d. There is a causal relationship (*causal verband*) between the impairment and the coming into effect of the law petitioned for judicial review;
- e. If the petition is granted, it is expected that the constitutional impairment argued will not occur and no longer occurs;

Considering whereas the Petitioners in the judicial review of Law Number 19 Year 2004 consist of eleven (11) non-governmental organizations which take the form of legal entities operating on the basis



of concern for the environment and the respect, advancement, protection, and enforcement of law and justice, democracy and human rights (Petitioners Number 1 through 11), and eighty one (81) Individual Indonesian Citizens (Petitioners Number 12 through 92) which include community members who live in the site of operations of thirteen (13) mining companies in a protected forest stipulated under Presidential Decree Number 41 Year 2004 and the environmental activist from the members of the community, and college students who are members of nature lovers' organizations;

Considering whereas based on Exhibit P-1, Petitioners Number 1 through 11 can be qualified as Petitioners from the category of private legal entities whereas Petitioners Number 12 through 92 can be qualified as petitioners from the category of individual Indonesian Citizens (including groups of individuals with a common interest) as referred to in Article 51 Paragraph (1) of the Constitutional Court Law;

Considering whereas the Petitioners have constitutional rights granted by the 1945 Constitution, such as those set out in Article 28A, Article 28C Paragraph (2), and Article 28H Paragraph (1), and that the Petitioners believe that their constitutional rights as mentioned have been impaired by the coming into effect of Law Number 19 Year 2004;

Considering whereas the impairment of the Petitioners' constitutional rights is specific in nature, namely involving environmental

damage and which has the potential to happen if the mining activities in the protected forest by the coming into effect of Law Number 19 Year 2004 continue, so that it is regarded that a causal relationship exists between the impairment of the constitutional rights and the *a quo* law petitioned for judicial review and that such impairment is expected to no longer occur if the *a quo* petition is granted;

Considering whereas based on the above matters, the Court is of the opinion that the Petitioners have met the requirements of legal standing to file a petition for judicial review of the *a quo* law as intended by Article 51 Paragraph (1) of the Constitutional Court Law and five (5) requirements of the impairment of constitutional rights as described above;

Considering whereas the Court has the authority to examine, hear, and decide upon the *a quo* petition, and the Petitioners have the legal standing, and therefore the Court shall further consider the principal issue of the petition;

### **3. Principal Issue of the Petition**

Considering whereas, in the principal issue of the case, the Petitioners filed a petition for judicial review of Law Number 19 Year 2004, for both formal and substantive review with the arguments to be taken into account by the Court and also by taking into account the statements of the

Government, the People's Legislative Assembly, and the Related Parties, as well as the evidence as described below.

**A. Formal Review**

Considering whereas in the petition for formal review, the Petitioners argued about the following matters:

- a. Whereas the process of formulation or creation of Law Number 19 Year 2004 is inseparable from the legal product named Government Regulation in Lieu of Law Number 1 Year 2004 regarding Amendment to Law Number 41 Year 1999 regarding Forestry (hereinafter referred to as Government Regulation in Lieu of Law Number 1 Year 2004). Therefore, if the formulation process of Government Regulation in Lieu of Law Number 1 Year 2004 fails to meet the formulation requirements pursuant to the 1945 Constitution, then, *mutatis mutandis*, the formulation process of Law Number 19 Year 2004 would similarly fail to meet the formulation requirements pursuant to the 1945 Constitution.
- b. Whereas the creation of Perpu Number 1 Year 2004 fails to meet the requirements of "the state of exigencies" as provided for by Article 22 Paragraph (1) of the 1945 Constitution which reads "*In the state of exigencies, the President shall have the right to stipulate a government regulation in lieu of law*". The elucidation of Article 22 paragraph (1) of

the 1945 Constitution prior to the amendment reads as follows: “This article concerns the *noodverordeningsrecht* of the President (Petitioners’ note: the right of the President to stipulate issue a emergency regulations). Such a provision is indeed necessary, so that the safety of the state can be guaranteed by the government in critical conditions which compel the government to take action immediately and appropriately. The government, however, shall not be released from the oversight of the People’s Legislative Assembly. Therefore, the government regulation referred to in this article, which has the same force as law, must also be ratified by the People’s Legislative Assembly.” According to the Petitioners, ‘the state of exigencies’ is a situation in which the state is in a state of emergency and that immediate measures are needed to save the state”;

- c. Whereas Perpu Number 1 Year 2004 does not meet the condition of the state being in a state of emergency as stated in Law (*Prp*) Number 23 Year 1959 regarding State of Danger; similarly, the content of the “Considering” part considerations of Perpu Number 1 Year 2004 does not indicate any reason regarding the state of exigencies as required by Article 22 Paragraph (1) of the 1945 Constitution;
- d. Whereas the process and form of Law Number 19 Year 2004 contravenes the principle of constitutional state, based on the following matters:

- The occurrence of a policy overlap concerning the mining site in a protected area, due to influence and pressure from mining operators;
- The disregard for the proper procedure for a good legislation formulation;
- The President's action of issuing Perpu Number 1 Year 2004 which was later stipulated as Law Number 19 Year 2004 contained an element of arbitrariness;
- An abuse of authority has occurred in the formulation process of Law Number 19 Year 2004;
- Law Number 19 Year 2004 has stipulated Perpu Number 1 Year 2004 into a law which is a defective legal product due to its non-compliance with the provision of Article 22 Paragraph (1) of the 1945 Constitution;
- There is an indication of bribery in the stipulation of Perpu Number 1 Year 2004 into a law by Law Number 19 Year 2004;

Considering whereas to corroborate their arguments in the formal review as described above, the Petitioners have presented experts Dr. Asep Warlan Yusuf (Administrative Law expert) and Prof. Dr. Frans Limahelu, S.H., LL.M. (legislative drafting expert), and witness Drs.

Bambang Setyo (former member of the Special Committee for Law Number 19 Year 2004), whose statements are substantially:

1. Expert Dr. Asep Warlan Yusuf gave a statement as completely described in the Principal Issue of the Case, which principally stated that thus far there are no clear and measurable standard concerning what is meant by “the state of exigencies” which may serve as the reason for the issuance of a Government Regulation in Lieu of Law (hereinafter referred to as Perpu). According to the expert, there should have been an objective and measurable standard for the issuance of the Perpu, and yet the issued Perpu Number 1 Year 2004, including its “Considering” part in its considerations, specified no such intended “state of exigency” reason whatsoever;
2. Expert Prof. Dr. Frans Limahelu, SH. LL.M gave a statement as completely described in the Principal Issue of the Case, which principally stated that Perpu Number 1 Year 2004 and Law Number 19 Year 2004 contravene Article 22 Paragraph (1) of the 1945 Constitution, since they only govern the permits as an administrative technicality and do not formulate any “the state of exigencies” reason;
3. Witness Drs. Bambang Setyo gave a statement as completely described in the Principal Issue of the Case, which principally stated that he perceived some irregularities in the process of stipulation of

Perpu Number 1 Year 2004 into Law Number 19 Year 2004, including the possibility of bribery;

Considering whereas in its statement and written statement as completely described in the Principal Issue of the Case, the Government principally stated that the state of exigencies is not always perceived as a state of danger at a civil emergency level, or military state of emergency, or state of war. In this regard, the state of exigencies is a situation that causes legal uncertainty and obstacles in the smooth performance of governmental function, namely in the creation of a good investment climate for natural resource utilization as mandated in Article 33 Paragraph (3) of the 1945 Constitution, in such a way that such situation compelled the Government to issue Perpu Number 1 Year 2004;

Considering whereas in its written statement as completely described in the Principal Issue of the Case, the People's Legislative Assembly (DPR) principally stated that the DPR approval to stipulate Perpu Number 1 Year 2004 into Law Number 19 Year 2004 constitutes the implementation of Article 22 Paragraph (2) of the 1945 Constitution; therefore, the process of formulation of Law Number 19 Year 2004 does not contravene the 1945 Constitution. Furthermore, it is also based on the consideration that legal certainty is required to create a conducive investment climate to further promote national economic growth followed

by job opportunity creation and the promotion of public welfare, and hence it does not contravene Article 33 Paragraph (3) of the 1945 Constitution;

Considering whereas based on the arguments of the Petitioners and the evidence, whether in the form of letters/documents (Exhibits P-2 through P-40), statements of experts and witnesses, and statements of the Government and DPR, the Court is of the following opinion:

- a. whereas the reason for the issuance of a Perpu by the President, including Perpu Number 1 Year 2004, was that the “state of exigencies” as referred to in Article 22 Paragraph (1) of the 1945 Constitution was its subjective judgment of the President, while the objectivity was evaluated by the Peoples Legislative Assembly (DPR) in the next hearing which could accept or reject the stipulation of the Perpu into a law;
- b. whereas Article II of Supplementary Provision of the 1945 Constitution states that *“With the stipulation of these amendments to the Constitution, the 1945 Constitution of the State of the Republic of Indonesia shall consist of the Preamble and articles”*. Therefore, this means that after the Amendment to the 1945 Constitution the Elucidation of the 1945 Constitution is no longer recognized, therefore the Elucidation of Article 22 Paragraph (1) of the 1945 Constitution quoted by the Petitioners may only be categorized as a historical



document having equal value as other historical documents, such as the provisions of Article 139 of the Constitution of the United States of Republic of Indonesia (RIS) and Article 96 of the 1950 Provisional Constitution which used the term Emergency Law for Government Regulation in Lieu of Law for the reason that “*urgent situations need to be immediately regulated*”, which can be used as a reference for historical interpretation. The full texts of Article 139 of the Constitution of the United States of the Republic of Indonesia and Article 96 of the 1950 Provisional Constitution are as follows:

Article 139 of the Constitution of the United States of the Republic of Indonesia:

- (1) The Government has the right at its own power and responsibility to stipulate an emergency law to regulate matters of federal governance which due to urgent circumstances need to be immediately regulated.
- (2) Emergency law shall have the power and authority of a federal law; this provision shall not prejudice what is stipulated in the following article.

Article 96 of the 1950 Provisional Constitution:

- (1) The Government has the right at its own power and responsibility to stipulate an emergency law to regulate

matters of federal governance which due to urgent circumstances need to be immediately regulated.

(2) Emergency law has the power and level of a law; this provision shall not prejudice what is stipulated in the following article.

- c. whereas the “state of exigencies” referred to in Article 22 Paragraph (1) is not the same as a “state of danger” as referred to in Article 12 of the 1945 Constitution and its regulation in Law (*Prp*) Number 23 Year 1959 regarding State of Danger which should be truly based on objective conditions as stipulated with a law;
- d. whereas the “state of exigencies” referred to in Article 22 Paragraph (1) of the 1945 Constitution is in fact the subjective right of the President which will later become objective if approved by the People’s Legislative Assembly (DPR) to be stipulated as a law;
- e. whereas in the state administration practice thus far, various Perpus issued by a President have indicated a tendency to interpret “the state of exigencies” as an urgent situation that needs to be regulated with a regulation equal to a law (such as the reasons that became the consideration of Government Regulation in Lieu of Law Number 1 Year 1984 regarding Deferment of the Coming into Effect of the Taxation Law Year 1983, Government Regulation in Lieu of Law Number 1 Year

1992 regarding Deferment of the Coming into Effect of Law Number 14 Year 1992 regarding Traffic and Road Transportation, Government Regulation in Lieu of Law Number 1 Year 1999 regarding Human Rights Court, Government Regulation in Lieu of Law Number 1 Year 2002 regarding Eradication of Criminal Acts of Terrorism, Government Regulation in Lieu of Law Number 2 Year 2002, as well as Government Regulations in Lieu of Law related to the General Election, Regional Head of Region Election, etc.), none of which have any relation to the state of danger as referred to in Article 12 of the 1945 Constitution and Law (Prp) Number 23 Year 1959 regarding State of Danger;

- f. whereas the rumored bribery relating to the stipulation of Perpu Number 1 Year 2004 into Law Number 19 Year 2004 cannot be proven in a legitimate and convincing manner by the Petitioners, nor is it the authority of the Court to review it, therefore it will not be considered any further;
- g. whereas although the state of exigencies which constitutes the consideration for the issuance of a Government Regulation in Lieu of Law has a subjective reason, in the future, any reasons that constitute the consideration of the President to issue a Government Regulation in Lieu of Law should be based more on the objective conditions of the nation and the state as reflected in the “Considering” part of the

considerations of the Government Regulation in Lieu of Law in question;

Considering whereas based on the above matters, the arguments of the Petitioners in the petition for formal review of Law Number 19 Year 2004 have not been sufficiently grounded to be granted;

## **B. Substantive Review**

Considering whereas in the petition for substantive review, the Petitioners argued the following matters:

1. Whereas the substance of the norm contained in Law Number 19 Year 2004 does not qualify as a law, since the substance of the *a quo* law does not constitute a norm of a general and abstract nature, but rather one with an individual and concrete nature and *eenmalig* in the form of permit stipulation (*beschikking*);
2. Whereas the “Considering” part of the considerations of Law Number 19 Year 2004 along with its General Elucidation, and Articles 83A and 83B of Perpu Number 1 Year 2004 which constitute its attachment, evidently contravene the provision on the protection of the human right with respect to a good and healthy environment as specified in Article 28H Paragraph (1) which states that “*Every person shall have the right to live a physically and mentally prosperous life, to have residence, and to obtain a proper and healthy living*”

*environment as well as to obtain health services*”, since they allow the existence of mining activities in the protected forest;

3. Whereas the “Considering” part of the consideration of Law Number 19 Year 2004 along with its General Elucidation and the context of Perpu Number 1 Year 2004 which constitute the attachment to the *a quo* law contravene the principles of sustainable development as stated in the document produced by the 1992 United Conference on Environment and Development (UNCED), namely 1) intergenerational equity, 2) intra-generational equity; 3) precautionary principle; 4) conservation of biological diversity; and 5) internalization of environment cost and incentive mechanism. Therefore, they also contravene the provisions of Article 33 Paragraph (4) of the 1945 Constitution which reads “*The national economy shall be organized based on economic democracy with the principles of togetherness, efficiency with justice, sustainability, environmental insight, independence, as well as by keeping the balance between progress and the unity of the national economy*”;
4. Whereas the presence of the mine in a protected forest as a consequence of the coming into effect of Law Number 19 Year 2004 in conjunction with Perpu Number 1 Year 2004 will have an adverse impact on the economy, the environment (carbon emission), society and culture (violence and violation of women’s rights), and hence contravenes the 1945 Constitution;

5. Whereas the issuance of Law Number 19 Year 2004 indicates that the Government has neglected public prosperity and has prioritized foreign investors, and hence it contravenes Article 33 of the 1945 Constitution;
6. Whereas Law Number 19 Year 2004 in conjunction with Perpu Number 1 Year 2004, which had legal certainty as its reason, actually created new legal uncertainty, since it is not synchronized with other laws, such as Law Number 5 Year 1990 regarding Conservation of Biological Natural Resources and Their Ecosystem and Law Number 41 Year 1999 regarding Forestry, and hence it contravenes with Article 28D Paragraph (1) of the 1945 Constitution which reads “*Every individual has the right to the recognition, the guarantee, the protection, and fair legal certainty as well as equal treatment before the law*”;

Considering whereas to corroborate their arguments, the Petitioners in addition to submitting written evidence in the form of letters/documents (Exhibits P-2 through P-40), also presented witnesses and experts whose statements were completely described in the Principal Issue of the Case, the substance of which essentially corroborates the arguments of the Petitioners;

Considering whereas the Government and the People’s Legislative Assembly have given their oral statement and written statement, which were completely described in the Principal Issue of the Case, the substance of which essentially rejects the arguments of the Petitioners;

Considering whereas the related party, namely the Mining Chamber of Commerce and Industry, has given its oral statement and written statement, which were completely described in the Principal Issue of the Case, the substance of which essentially rejects the arguments of the Petitioners;

Considering whereas the statements of the experts and witnesses presented by the Government and the Related Party, and thirteen (13) mining companies in the protected forest area stipulated under Presidential Decree Number 41 Year 2004 regarding Licensing or Agreements in the field of Mining Located in a Forest Area, the statements being completely described in the Principal Issue of the Case, which essentially corroborate the arguments of the Government and the Related Party;

Considering whereas based on the above matters, the Court is of the following opinion:

1. Whereas the law filed for substantive review is Law Number 19 Year 2004, the substance of which stipulates Perpu Number 1 Year 2004 into a law. The considerations of the *a quo* law read as follows:
  - a. *whereas Law Number 41 Year 1999 regarding Forestry does not regulate the proceedings of mining permits or agreements which had existed prior to the coming into effect of said law;*

- b. *whereas the matter creates legal uncertainty in mining operations in a forest zone, especially for investors who have possessed a permit or agreement prior to the coming into effect of such law, therefore it may put the Government in a difficult position in developing the investment climate;*
- c. *whereas in the effort to create legal certainty in conducting a business in the field of mining located in a forest zone, and to encourage the interest and confidence of investors to conduct business in Indonesia, the Government has stipulated Government Regulation in Lieu of Law Number 1 Year 2004 regarding Amendment to Law Number 41 Year 1999 regarding Forestry;*

The “Considering” part of the consideration of Law Number 19 Year 2004 essentially merely takes over the “Considering” part of the considerations of Perpu Number 1 Year 2004. Whereas, the text of Perpu Number 1 Year 2004 which amended Law Number 41 Year 1999 regarding Forestry essentially only adds two articles in Chapter XVII concerning Closing Provisions, namely Article 83A and Article 83B, the texts of which are as follows:

- Article 83A: *“All permits or agreements in the field of mining in a forest zone which have existed prior to the coming into effect of Law Number 41 Year 1999 regarding Forestry shall be declared as remaining in effect until the expiration of the permit or agreement in question.”*



- *Article 83B: "Further implementation of the provision as referred to in Article 83A shall be stipulated with a Presidential Decree".*

Taking into account the text of the "Considering" part of the considerations of Law Number 19 Year 2004 and the texts of Article 83A and Article 83B of Perpu Number 1 Year 2004 it is evident that the provisions contain a Transitional Provision as well as a Closing Provision. The reason is that, pursuant to Law Number 10 Year 2004 regarding the Formulation Laws and Regulations its attachment, a Transitory Provision shall contain "*adjustments to the Legislation that already existed when the new Legislation came into effect, so that the Legislation may be undertaken smoothly and not cause any legal problems* (Attachment to item C.4. 100)", so that "*The new Legislation may contain a regulation that contains a temporary deviation or temporary deferment for certain legal action or legal relationship* (Attachment point C.4. 103)". On the other hand, the Closing Provision generally contains provisions on a) the appointment of an organ or instrument who implements the Legislation; b) shortened name; c) status of the existing Legislation; and d) the time when the Legislation comes into effect (item C.5.111). Furthermore, the Closing Provisions may contain an implementing regulation that has the nature of: a) executing (executive), such as the appointment of a certain official who is authorized to issue permits, appoint employees, and so forth; b) regulate (legislative), such as giving the authority to make implementing regulations (item C.5. 112).

Therefore, with reference to the definition of Transitional Provision and Closing Provision pursuant to Law Number 10 Year 2004 along with its Attachment, then Article 83A of Perpu Number 1 Year 2004 belongs to the Transitional Provisions category, while Article 83B belongs to the Closing Provisions category; therefore, not all of Article 83A and Article 83B constitute closing provisions as set forth in Perpu Number 1 Year 2004.

Whereas the substance of Article 83A is an abstract and general norm that belongs to the transitional provision norm, rather than a concrete and individual norm in the form of a stipulation as argued by the Petitioners. Likewise, Article 83B, the substance of which constitutes an abstract and general norm classified as transitional provisions of an executive nature, namely the appointment of a certain official, in this case the President, who is authorized to issue permits with a Presidential Decree.

2. Whereas in terms of its substance, Article 83A of Perpu Number 1 Year 2004 does constitute a **temporary deviation from the provision of Article 38 Paragraph (4) which reads “Mining with an open mine system in a protected forest zone shall be prohibited”**. The temporary nature lies in the words “*until the expiration of the permit or agreement in question*”. Therefore, mining with an open mine system in a protected forest zone essentially remains prohibited in Indonesia; any deviation will be transitional (temporary) in nature. In this matter, although the Court agrees with the entire arguments of the Petitioners regarding such various

- dangers and negative impacts of mining with an open mine system in a protected forest zone, the Court is also able to understand the legislators' reason regarding the need for a transitional provision that is enforced for a continuation of a legal situation or vested rights/acquired rights, namely the permits or agreements already secured by mining companies prior to the coming into effect of Law Number 41 Year 1999 regarding Forestry;
3. Whereas the Government should be consistent and should have objective standards in determining whether a forest zone constitutes a protected forest zone or not, so as to provide legal certainty for all concerned, and that there shall be good coordination between the department in charge of the forestry sector and the department in charge of the mining sector, so as to prevent overlaps and confusion of policies;
  4. Whereas in formulating the transitional provisions, the Legislators can also determine the terms of adjustment for all mining companies that have obtained a mining permit in a forest zone prior to the coming into effect of Law Number 41 Year 1999 regarding Forestry with said Law Number 41 Year 1999. The reason is that in essence, ***“At the time when a legislation is declared to have come into effect, all existing legal relationships or occurring legal action, whether before, during, or after the new legislation is declared to be coming into effect, shall be subject to the new legislation” (Attachment to Law Number 10 Year 2004, item C.4.102).*** In other words, all provisions of Law Number 41

- Year 1999 regarding Forestry, including the one regarding the existence of a mining prohibition in a protected forest, should apply to all mining operators, or at least those who have obtained a permit prior to the coming into effect of Law Number 41 Year 1999 should make the adjustment.
5. Whereas the Court agrees with the expert Prof. Dr. Emil Salim who stated in his written statement dated June 20, 2005 received at the Registry Office of the Constitutional Court on June 21, 2005 that the six (6) companies that were still at the feasibility study stage and exploration stage, would have to be subject to the provisions of Article 38 Paragraph (4) of Law Number 41 Year 1999 regarding Forestry once they entered the exploitation stage, insofar as the exploration and exploitation permits did not constitute a unit.
  6. Whereas therefore, Law Number 19 Year 2004 in conjunction with Perpu Number 1 Year 2004 is not substantially unconstitutional so long as the permits or agreements already existing prior to the coming into effect of Law Number 41 Year 1999 regarding Forestry are adjusted to the *a quo* law in their implementation, at least for the companies that are still at the feasibility study and exploration stages.
  7. Whereas the Government should exercise monitoring, evaluation, and supervision by looking at the cost and benefit given to the public, nation and state, and make the modifications to work contract terms to anticipate any

negative impacts of the mining activities to the environment accompanied by the obligation to rehabilitate or mitigate the negative impacts for the benefit of current and future generations. Monitoring, evaluation and supervision should lead up to the courage to take measures in the form of revocation of mining permit in the event of violation of the determined terms of the mining permits;

Considering whereas based on the above description, according to the Court the petition of the *a quo* Petitioners, whether in the formal review or substantive review of Law Number 19 Year 2004 regarding the Stipulation of Government Regulation in Lieu of Law (Perpu) Number 1 Year 2004 regarding Amendment to Law Number 41 Year 1999 regarding Forestry into a law against the 1945 Constitution has no sufficient grounds, therefore the petition must be rejected;

In view of Article 56 Paragraph (5) of Law Number 24 Year 2003 regarding the Constitutional Court;

### **PASSING THE DECISION**

To reject the petition of the Petitioners;

Hence the decision was made in the Consultative Meeting of Justices on Monday, July 4, 2005 attended by nine (9) Constitutional Court Justices: Prof. Dr. Jimly Asshiddiqie, S.H., as the Chairman and concurrent Member and Prof. Dr. H.M. Laica Marzuki, S.H., Prof. H.A.S. Natabaya, S.H., LL.M., Prof. A. Mukthie Fadjar, S.H., M.S., Dr. Harjono,

S.H., MCL., H. Achmad Roestandi, S.H., I Dewa Gede Palguna, S.H., MH., Maruarar Siahaan, S.H., and Soedarsono, S.H., and was pronounced in a Plenary Session of the Constitutional Court open for the public on this day of Thursday, July 7, 2005, by us: Prof. Dr. Jimly Asshiddiqie, S.H. as the Chairman and concurrent Member, accompanied by Prof. Dr. H.M. Laica Marzuki, S.H., Prof.H.A.S. Natabaya, S.H., LL.M., Prof. A. Mukthie Fadjar, S.H.,M.S., Dr. Harjono, S.H., MCL., H. Achmad Roestandi, S.H., I Dewa Gede Palguna, S.H.,M.H., Maruarar Siahaan, S.H., and Soedarsono, S.H., respectively as Members, and assisted by Eddy Purwanto, S.H., as Substitute Registrar, and in the presence of the Petitioners/their Attorneys, the Government, the People's Legislative Assembly, and the Related Parties/their Attorneys.

**CHIEF JUSTICE,**

**signed**

**PROF. DR. JIMLY ASSHIDDIQIE, S.H.**

**JUSTICES,**

**signed**

**PROF.DR.H.M. LAICA MARZUKI, S.H.**

**signed**

**PROF. DR. H.A.S.NATABAYA, S.H, LL.M.**

**signed**

**PROF. A. MUKTHIE FADJAR, S.H., MS.**

**signed**

**H. ACHMAD ROESTANDI, SH.**

**signed**

**signed**

**DR. HARJONO, SH., MCL.**

**I DEWA GEDE PALGUNA, SH., MH.**

**signed**

**SOEDARSONO, SH.**

**SUBSTITUTE REGISTRAR,**

**signed**

**EDDY PURWANTO, S.H.**