



DECISION

Number 021/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 on the case of Petition for Judicial Review of the Law of the Republic of Indonesia Number 41 Year 1999 regarding Forestry which has been amended based on 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 the Amendment to Law Number 41 Year 1999 regarding Forestry Into law against the 1945 Constitution of the State of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) filed by:

Name : PT. Astra Sedaya Finance represented by Hendra Sugiharto.
Occupation : Vice President Director of PT. Astra Sedaya Finance.
Address : Jl. RS Fatmawati Number 9 South Jakarta.

In this case granting the power of attorney to:

1. Bahrul Ilmi Yakup, S.H.

2. Adri Fadly, S.H.
3. Dhab K. Gumayra, S.H.

All of whom being advocates under *Palembang International Law Office; Bahrul Ilmi Yakup & Partners*; having its address at Jl. Diponegoro Baru Number 25 Palembang, tel./fax 0711 364779.

Hereinafter referred to as **PETITIONER**.

LEGAL CONSIDERATION

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

Considering whereas before entering the main issue of the case, the Constitutional Court (hereinafter referred to as the Court) will first take the following matters into account:

1. Whether the Court has the authority to examine, hear, and decide upon the petition filed by the Petitioner;
2. Whether the Petitioner has the legal standing to file the *a quo* petition;

With regard to the aforementioned two issues, the Court is of the following opinion:

I. The Authority of the Court

Considering whereas that pursuant to Article 24C Paragraph (1) of the 1945 Constitution of the State of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution), the Court shall have the authority to hear at the first and final level, the decisions of which shall be final, to conduct judicial review on a law against the 1945 Constitution. The provision is described further in Article 10 Paragraph (1) 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 State Gazette of the Republic of Indonesia Number 4316, hereinafter referred to as the Constitutional Court Law) in conjunction with Article 12 Paragraph (1) of the Law of the Republic of Indonesia Number 4 Year 2004 regarding Judicial Power (State Gazette of the Republic of Indonesia Year 2004 Number 8, Supplement to State Gazette of the Republic of Indonesia Number 4358).

Considering whereas that the petition of the Petitioner pertains to substantive review on Article 78 Paragraph (15), and Elucidation of the Law of the Republic of Indonesia Number 41 Year 1999 regarding Forestry (State Gazette of the Republic of Indonesia Year 1999 Number 167, Supplement to State Gazette of the Republic of Indonesia Number 3888) as amended with 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 the Amendment to Law Number 41 Year 1999 regarding Forestry Into law (hereinafter referred to as the Forestry Law);

Considering whereas Article 78 Paragraph (15) of the Forestry Law and Elucidation thereof is one of the articles and paragraphs petitioned for judicial review in Case Number 013/PUU-III/2005, on which the Court's Decision states that "The Petition Cannot Be Accepted (*niet ontvankelijk verklaard*), because the Petitioner in that case has no legal standing, hence it did not arrive at the substantive issue of constitutionality of the aforementioned article and paragraph. Thus, judicial review of the aforementioned article and paragraph is not contradictory to the provision of Article 60 of the Constitutional Court Law which reads "*The substance of paragraphs, articles, and/or parts in Law that has been petitioned for judicial review cannot be petitioned for another judicial review*".

Considering whereas therefore, the Court states that it has the authority to examine, hear, and decide upon the Petitioner's petition for the review the constitutionality of the substance of Article 78 Paragraph (15) of the Forestry Law and Elucidation thereof against the 1945 Constitution.

II. Legal Standing of the Petitioner

Considering whereas that pursuant to the provision of Article 51 Paragraph (1) of the Constitutional Court Law and Elucidation thereof, Petitioners in the judicial review of laws against the 1945 Constitution shall be parties who deem that their constitutional rights and/or authorities have been impaired by the coming into effect of a law, namely: a) individual Indonesian citizens, including groups of people having a common interest; b) customary law community units insofar as they are still in existence and in accordance with the development of

the communities and the principle of the Unitary State of the Republic of Indonesia as regulated in law; c) public or private legal entities or d) state institutions;

Considering whereas based on the jurisprudence of the Court, the impairment of the constitutional right of the Petitioner as intended in Article 51 Paragraph (1) of the Constitutional Court Law must meet 5 (five) requirements, namely:

- a. the petitioner must have a constitutional right granted by the 1945 Constitution;
- b. the Petitioner believes that his/her constitutional right has been impaired by the coming into effect of a law;
- c. the impairment of such constitutional right shall be specific and actual in nature or at least potential in nature which, pursuant to logical reasoning, will take place for sure;
- d. there is a causal relationship (*causal verband*) between the impairment of such constitutional right and the law petitioned for review;
- e. if the petition is granted, it is expected that the impairment of such constitutional rights argued will not or does not occur any longer;

Considering whereas that the Petitioner is PT. Astra Sedaya Finance represented by its Vice President Director, Hendra Sugiharto, that based on the written evidence submitted Exhibits (Evidences P-01, P-02, P-03) and legalized in the Court's hearing, is eligible as a private legal entity and hence the Petitioner

has the capacity as a private legal entity to file the petition for judicial review of a Law against the 1945 Constitution as intended in Article 51 Paragraph (1) Sub-Paragraph c of the Constitutional Court Law;

Considering whereas although the Petitioner has the capacity to file the petition, it still must be proved whether the Petitioner as a legal entity has constitutional rights granted by the 1945 Constitution and whether the constitutional rights argued have been impaired by the coming into effect of Article 78 Paragraph (15) of the Forestry Law and Elucidation thereof;

Considering whereas as a private legal entity, the Petitioner has constitutional rights granted by the 1945 Constitution as constitutional rights owned by individual Indonesian citizens, namely, as argued by the Petitioner, the right to fair legal certainty [Article 28D Paragraph (1) of the 1945 Constitution], the right to the protection of property under his control [Article 28G Paragraph (1) of the 1945 Constitution], and the right to have property right that cannot be taken over arbitrarily by anyone [Article 28H Paragraph (4) of the 1945 Constitution]. Indonesia, as constitutional state based on Article 1 Paragraph (3) of the 1945 Constitution, holds the principles that among others protect human rights, including property rights (*protection of property rights*). Thus, although the rights mentioned in the 1945 Constitution are included in Chapter AX Human Rights with the formulation of “Every person ...”, it has been universally accepted, however, that in certain cases, including cases of property rights, such

provisions on human rights can also be applied to legal entities (*legal person, rechtspersoon*).

Considering whereas the Petitioner as a finance company in conducts its business rendering underwriting services to its consumers, one of which being in the form of Fiduciary Guaranty, and hence the legal relationship, in this case an agreement, between the Petitioner and its consumers is bound by the provisions of Law Number 42 Year 1999 regarding Fiduciary Guaranty (hereinafter referred to as the Fiduciary Law);

Considering whereas in accordance with Article 1 Sub-Article 1 of the Fiduciary Law, "*Fiduciary shall be the transfer of property rights of an object based on trust provided that the object the property rights on which are transferred shall remain under the control of the object owner*", the civil rights in the form of property rights on the object under fiduciary guaranty have been transferred to the Fiduciary Assignee, in this case the Petitioner.

Considering whereas the property rights of the Petitioner on the objects/goods under fiduciary guaranty, in this case 3 (three) units of Toyota New Dyna trucks, have been affirmed by a Fiduciary Agreement between the Petitioner as Fiduciary Assignee and the goods owner as Fiduciary Assignor (Exhibits P-10 and P-11) and by Decision of Sengeti District Court in Civil Case Number 04/Pdt.Plw/2005/PN.Sgt (Exhibits P-14);

Considering whereas the constitutional rights of the Petitioner as Fiduciary Assignee in the form of property rights on goods under fiduciary guaranty are deemed to have been impaired by the coming into effect of the Forestry Law, particularly Article 78 Paragraph (15) and Elucidation thereof, which has regulated in the seizure of goods concerned for the state, which means that there is clearly a causal relationship between the constitutional rights of the Petitioner and the coming into effect of Article 78 Paragraph (15) of the Forestry Law, and that it has been evident that the impairment of such constitutional rights of the Petitioner is specific and actual in nature and that if the petition is granted such impairment will not occur;

Considering whereas with the aforementioned description, in the Court's opinion the Petitioner's argument, insofar as it pertains to the legal standing, is sufficiently grounded, and hence the Court declares that the Petitioner has the legal standing to file the *a quo* petition;

Considering whereas that since the Court has the authority to examine, hear, and decide upon the *a quo* petition and the Petitioner has the *legal standing*, it is necessary therefore to further consider the principal issue of the petition namely to examine the issue of constitutionality of Article 78 Paragraph (15) of the Forestry Law and Elucidation thereof;

III. Principal Issue of the Petition

Considering whereas that in the principal issue of the petition the Petitioner argues about the unconstitutionality of Article 78 Paragraph (15) of the Forestry Law which reads “*All forest products as a result of criminal acts and violations and or the transporting vehicles thereof used to commit such criminal acts and or violations as intended in this article shall be confiscated for the State*”, and the Elucidation which reads “*Transporting vehicles shall include, among others, vessels, barges, trucks, trailers, pontoons, tugboats, sailboats, helicopters, and so forth*”. According to the Petitioner, such provision has allowed arbitrary seizures of property to happen, although the seized goods or transporting vehicles are not the properties of the perpetrators of the crimes and/or violations, but of the third party having good faith that should be protected;

Considering whereas that to prove the arguments, the Petitioner has submitted written or documentary evidence (Exhibits P-1 up to P-28) and has presented the statements of experts Dr. Febrian, S.H., M.S., and Amrullah Arpan, S.H., S.U. that basically support the Petitioner’s arguments, with the aforementioned statements of experts presented by the Petitioner being completely set out in the description concerning the principal issue of the case;

Considering whereas the Government has given its oral statement and written statement as completely set out in the description concerning principal issue of the case, which principally reject the Petitioner’s arguments. The People’s Legislative Assembly (DPR) in the it’s written statement also basically reject the Petitioner’s arguments;

Considering whereas according to the Court, the formulation of Article 78 Paragraph (15) of the Forestry Law is actually different from the formulation of Article 39 Paragraph (1) of the Indonesian Criminal Code (KUHP) which explicitly states: *“Goods owned by a convicted party obtained from crimes or intentionally used to commit crimes can be seized”*, or from the formulation of Article 77 Paragraph (3) of Law Number 22 Year 1997 regarding Narcotics, which states *“In the event that the seized instruments as intended in Paragraph (1) belong to third party having good faith, the owner can file an objection to the seizure to the related court, within 14 (fourteen) days after the announcement of first level court’s decision”*. The formulation of Article 78 Paragraph (15) of the Forestry Law which is different from the aforementioned two provisions can cause possible multi-interpretations in their application, but it does not mean that the substance of in the *a quo* articles and paragraphs are automatically unconstitutional, because:

- a. property rights in accordance with the 1945 Constitution are not Human Rights of absolute nature, but that the implementation thereof must comply with the limitations stipulated by law for the sole purpose of public security and order [*vide* Article 28J Paragraph (2) of the 1945 Constitution];
- b. the provision of Article 78 Paragraph (15) of the Forestry Law is intended to protect national interests, particularly the safeguarding of state assets and environment from illegal logging crime that has been running rampant everywhere and which has indirectly disturbed and even threatened the human

rights of other people or the public, harmed the country, endangered the ecosystem, and continued survival;

- c. the property rights of the Petitioner obtained through a Fiduciary Agreement are still protected by various provisions of the Fiduciary Law and also in the law application practices by the Sengeti District Court in the civil case Number 04/Pdt.Plw/PN.Sgt which granted the challenge (*verzet*) of the Petitioner against the seizure of his property rights on the goods deprivation by the attorney general's office (Evidence P-14);
- d. the seizure of goods (trucks) which are the property rights of the Petitioner in the Criminal Case in Sengeti District Court is a matter of law application as revealed in the hearing, so that it is not a matter of constitutionality of the norms in Article 78 Paragraph (15) of the Forestry Law and Elucidation thereof;
- e. pursuant to Article 103 of the Indonesian Criminal Code (KUHP), the provision of Article 39 Paragraph (1) of the KUHP concerning the seizure shall goods are also apply to criminal acts regulated in laws and regulations other than the KUHP unless is the Law provides otherwise. Thus, the application of Article 78 Paragraph (15) of the Forestry Law and Elucidation thereof must still refer to the provision of Article 39 Paragraph (1) of the KUHP;

Considering whereas in addition to the aforementioned considerations, it can be added as well that, although property rights are protected in international law, as also protected in the 1945 Constitution, the Court, however, deems it

necessary to specifically consider the types of property rights that arise from a fiduciary agreement of delivery and acceptance of property rights which constitutes a guaranty for financing agreement between creditor and debtor, as found in the *a quo* petition of the Petitioner. Property rights constitute an appreciation to the natural existence of human beings, which in certain cases can also be applied to legal entities (*rechtspersoon*). In addition to such property rights, other property rights constructed by law are also recognized, as existing in the fiduciary concept. Article 1 of Law Number 42 Year 1999 regarding Fiduciary Guaranty provides as follows:

Sub-Article 1 : *Fiduciary* shall be the transfer of ownership on an object based on trust provided that the object the property rights of which are transferred shall remain under the control of the object owner.

Sub-Article 2 : Fiduciary Guaranty shall be guaranty right on immovable goods of both tangible and intangible nature and non movable goods particularly buildings that cannot be charged with security rights as intended in Law Number 4 Year 1996 regarding Security Rights which are still under the control of fiduciary Assignor as collateral for the settlement of certain debts, giving a prioritized position to the fiduciary assignee over other creditors.

Considering whereas accordingly, property rights that because of a fiduciary agreement are actually only accessory (*assesoir*) to the principal agreement. A fiduciary agreement is basically a guaranty towards a financing

agreement, in which the creditor provides financing on the debtor's transactions with third parties. To guarantee the settlement of the debtor's liability to the creditor, it is constructed that the ownership of the fiduciary object will change when the debtor finally settles his liability. Thus, any failure of the debtor to settle his liability can be solved by withdrawing the guaranteed objects which are still the property rights of the creditor and giving the right to the creditor to sell them and take the settlement of debtor's liability by himself. The creditor must return the remaining sale proceeds to the debtor if any. Article 33 of the *a quo* Law in fact prohibits the fiduciary assignee from exercising his rights as the owner to own the objects under Fiduciary Guaranty for himself if the debtor is in default.

Considering whereas that with such construction, the property rights argued by the Petitioner on the fiduciary objects are not similar to property rights based on inherent relationship between the property right owner and the objects of property rights, hence legal protection of the property rights can not be treated similarly, not to mention if such matter is confronted to a bigger public interest. Fiduciary objects which are movable objects shall be under the full control of the Fiduciary Assignor, including in controlling the use thereof in lawful or unlawful acts, by calculating every risk which can be anticipated earlier. Any responsibilities arising from criminal acts, *in casu illegal logging*, which are committed by using transporting vehicles which are "fiduciary objects", cannot be exonerated merely due to the existence of a financing agreement constructing the property rights being on the part of the creditor. Although the creditor (Petitioner) takes no responsibility for the criminal acts committed by the debtor,

the debtor's control of the transporting vehicles which are the objects of Fiduciary Guaranty also poses a risk to the transporting vehicles used at his own risk. Protection of public interest is prioritized over protection of individual property rights constructed in the Fiduciary Agreement. Meanwhile, the remaining claim right of the creditor is still protected although the fiduciary objects are seized by state country as intended in Article 78 Paragraph (15) of the Forestry Law;

Considering, from the aforementioned description it is clear that not every seizure of property rights is automatically contradictory to the 1945 Constitution. The seizure of property rights can be allowed insofar as it is conducted in accordance with the principle of *due process of law*, especially to property rights originating from legal construction, *in casu* property rights originating from a Fiduciary Guaranty Agreement. However, apart from the legality of a seizure of property rights insofar as it is conducted in accordance with the aforementioned principle of *due process of law*, the property rights of third parties having good faith (*ter goeder trouw*) must still be protected. Thus, based on the aforementioned considerations, the Court is of the opinion that Article 78 Paragraph (15) of the Forestry Law and Elucidation thereof are not contradictory to the 1945 Constitution. Accordingly, the petition of the Petitioner must be rejected.

In view of Article 56 Paragraph (5) 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 and Supplement to State Gazette of the Republic of Indonesia Number 4316);

PASSING THE DECISION

To declare that the petition of the Petitioner is rejected in its entirety.

Dissenting Opinions

With respect to this decision, 2 (two) Constitutional Court Justices, namely Prof. Dr. H. M. Laica Marzuki, S.H., and Dr. Harjono. S.H., M.C.L. gave dissenting opinions concerning the legal standing of the Petitioner, as follows:

1. Constitutional Court Justices Prof. Dr. H. M. Laica Marzuki, S.H.:

Apart from the status of the Petitioner as a private legal person *privaat rechtspersoon*, when filing for the review of an article of formal law (*het formeel wet artikef*), as Article 78 Paragraph (15) of Law Number 41 Year 1999 regarding Forestry and Elucidation thereof, that are deemed contradictory to the 1945 Constitution it is necessary to first question to what extent the Petitioner has the legal standing as intended in Article 51 Paragraph (1) of the Constitutional Court Law. *Juridische vraagstuk*: are the constitutional rights of Petitioner impaired by the coming into effect of the article of formal law (*het formeel wet artikef*)?

Article 78 Paragraph (15) of Law Number 41 Year 1999 and Elucidation thereof, as amended pursuant to Law Number 19 Year 2004 regarding the

Stipulation of Government Regulation In Lieu of Law Number 41 Year 1999, reads as follows:

(15) All forest products as a result of criminal acts and violations and or equipment including transporting vehicles thereof used to commit such criminal acts and or violations as intended in this article shall be confiscated for the state

The Elucidation reads:

(15) Transporting vehicles shall include vessels, barges, trucks, trailers, pontoons, tugboats, sailboats, helicopters, and so forth.

The aforementioned article of formal law (*het formeel wet artikel*) provides that all forest products as a result of criminal acts and violations and or instruments (including transporting vehicles) used to commit such criminal acts and or violations shall be seized for the country. The Article is *mutatis mutandis* in conformity with Article 39 Paragraph (1) of the KUHP: " *Goods owned by a convicted party obtained from crimes or intentionally used to commit crimes, can be seized*" (WvS: (1) *voorwerpen, den veroordeelde toebehoorende door middel van misdrijf verkregen of waarmede misdrijf opzettelijk is gepleegd, kunnen worden verbeurd verklaard*).

The rules of articles of formal law (*het formeel wet artikel*) enforce the rules of material law (*het materieele recht*), including enforcing and protecting an individual person, family, honor, dignity and assets guaranteed by the constitution. The articles of formal law (*het formeel wet artikel*) have been

created to enforce and protect basic rights. However, in exercising the basic rights, a person or a legal entity must not violate – *in casu* – law and Legislation. The use of basic rights must not violate the basic rights and freedom of other people. Article 28J Paragraph (2) of the 1945 Constitution provides that *"In exercising his/her rights and freedom, every person must submit to the limitations stipulated in laws and regulations with the sole purpose of guaranteeing the recognition and respect to the rights and freedom of other people and of fulfilling fair demands in accordance with the considerations of morality, religious values, security, and public order in a democratic society"*. In this respect, Article 29 (2) of The Universal Declaration of Human Rights (1948), states as follows:

(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirement of morality, public order and the general welfare in a democratic society.

According to law, all results of criminal acts and violations, including from transporting vehicles, which are used to commit such criminal acts and or violations should be seized (*worden verbeurd verklaard*) for the state. In general, all countries apply such rules of articles of formal law (*het formeel wet artikel*) in dealing with criminal cases. When a seizure or confiscation of goods is deemed contradictory to law or illegal, the seizure or confiscation can be sued for to the pre-trial examination judge or by other measures in accordance with the *due*

process of law. Besides, it is not *onrechtmatig*, or even violating the constitution when the regulation concerning criminal acts (*misdrijf*) is combined with acts of violation (*overtreeding*) in an article of formal law (*het formeel wet artikel*), as in Article 78 Paragraph (15) of Law Number 41 Year 1999. Article 70 Paragraph (1) of the KUHP regulates the matters concerning the combination of acts violation and criminal in connection with *meerdaadse samenloop* pursuant to Article 65 and 66 of the KUHP. Since the rules of formal law (*het formeel recht*) have been created to enforce and uphold the rules of material law (*het materieele recht*), including the constitution, the Petitioner's petition filed for judicial review of Article 78 Paragraph (15) of Law Number 41 Year 1999 regarding Forestry and Elucidation thereof is groundless. It is evident that the constitutional rights of the Petitioner have not been impaired by the coming into effect of the article of formal law (*het formeel recht artike*l).

The Court should have declared not to accept (*niet ontvankelijk verklaard*) the petition of the Petitioner.

2. Constitutional Court Justice Dr. Harjono, S.H., M.C.L. :

The Petitioner, PT Astra Sedaya Finance was established in accordance with provisions regarding procedures for establishing a limited liability company, and hence the qualification of the Petitioner as a private legal entity as intended in Article 51 of the Constitutional Court Law has been fulfilled. The Petitioner argues that constitutional rights pursuant to Article 28G Paragraph (1) and Article 28H Paragraph (1) of the 1945 Constitution concerning protection on "assets "

and “personal property rights” have been impaired. Although those articles are included in the Chapter concerning Human Rights, and hence the provisions use the term “every person“, those articles, however, can be applied to legal entities because the protection is aimed at protecting the property rights on assets in which the rights are not only owned by “*natural persons*“ but also by “*legal persons*“.

To give the legal standing to the Petitioner, it is important and decisive influential to determine whether the Petitioner is the owner of 3 (three) units of vehicles, 2 (two) units of which were seized by the state based on Decision of Sengeti District Court Sengeti No: 33/Pd.B/2005/PN.SGT, dated April 8, 2005, and one unit being seized for the state based on the prosecution by the District Prosecutor’s Office of Sengeti in the criminal case No 117/Pid.B/2005 /PN SGT.

The Petitioner argues that those cars are the property of the Petitioner based on a Financing Agreement with Fiduciary Guaranty between the Petitioner and consumers named Juli Andriansyah and Febriansah. The agreement between the Petitioner and the consumers was based on Law Number 42 Year 1999 regarding Fiduciary Guaranty, Article 1 of which reads: “*Fiduciary shall be the transfer of property rights of an object based on trust provided that the object the property rights of which are transferred shall remain under the control of the object owner*“. With respect to the aforementioned provision, the question is whether the ownership of 3 (three) units of vehicles as described above has been thoroughly transferred to the Petitioner. Article 4 of the Fiduciary Law states that

Fiduciary Guaranty shall be a accessory agreement to a principal agreement which creates obligations to the parties to perform something. The seizure of the *a quo* vehicles caused the transfer of control of those vehicles from the debtor to the state while the vehicles are the objects of fiduciary as an accessory agreement. In accordance with legal principles an accessory agreement will follow its principal agreement, if the principal agreement is terminated the accessory agreement will be terminated as well, but not the reverse that the termination of the accessory agreement will automatically terminate the principal agreement. The question is whether with the discontinued accessory agreement namely fiduciary, because the agreement objects have been seized for the state, will terminate the original principal agreement namely the loan agreement, as proved by the use of debtor and creditor terms. If the principal agreement has not expired, and the Petitioner as creditor still has the right to obtain the payment from the debtor, it will be unreasonable for the Petitioner to declare himself as the owner of the aforementioned 3 (three) units of vehicles. Accordingly, to ensure by law whether the Petitioner is the owner of the vehicles the contractual relationship between the Petitioner and the debtor must be first determined, in this case the parties with whom the Petitioner has entered into a financing agreements. In the petition, the Petitioner does not explain the status of relationship with the debtor with whom the Fiduciary Agreement has been entered into. The certainty regarding such contractual relationship cannot be determined by the Petitioner alone, but that it must be determined by law, namely whether the debtor still recognizes the existence of liabilities to pay his debts.

Even if the debtor does not admit the existence of liabilities to pay the debts, the question is whether the Petitioner has settled the dispute in the court, because in one of the agreement conditions proposed by the Petitioner to the debtor (Exhibits P-8) namely clause 16 reads thereof: *“In the event of any different opinions or disagreement or dispute between the CREDITOR and DEBTOR with regard to this AGREEMENT or its the implementation, the matters shall be settled by consultation, but if the effort does not lead to an acceptable decision, the CREDITOR and DEBTOR shall agree to settle them in the District Court of South Jakarta without reducing the rights of the CREDITOR to file lawsuits in other venues”*. If the settlement in the court as referred to in the aforementioned clause has been taken, the relationship between the creditor and debtor will certainly be clear, whether or not it has or been terminated. If the relationship has not been terminated, the statement of the Petitioner that the aforementioned vehicles are the property of the Petitioner will be surely incorrect. With the unclear status of the Petitioner’s ownership of the vehicles, due to the absence of court decision stipulating the contractual relationship between the Petitioner and the debtor, I am of the opinion that the interest of the Petitioner which has been impaired by the coming into effect of Law Number 41 Year 1999 regarding Forestry, as amended based on Law Number 19 Year 2004 regarding Government Regulation In Lieu of Law Number 1 Year 2004 has not been substantiated, and hence it must be declared substantiated the petition of the Petitioner can not be accepted (*niet ontvankelijk verklaard*).

Hence, this Decision was made in the Consultative Meeting of by 9 (nine) Constitutional Court Justices on Tuesday, February 28, 2006 and was pronounced in the Plenary Session of the Constitutional Court open for public on this day Wednesday, March 1, 2006 by us Prof. Dr. Jimly Asshiddiqie, S.H., as the Chairperson and concurrent Member, Prof. Dr. H.M. Laica Marzuki, S.H., Prof. H.A. Mukhtie Fadjar, S.H., M.S., Prof. H.A.S. Natabaya, S.H, LL.M., Dr. Harjono S.H., M.C.L., Maruarar Siahaan, S.H., H. Achmad Roestandi, S.H., I Dewa Gede Palguna, S.H., M.H., and Soedarsono, S.H., respectively as Members, assisted by Ida Ria Tambunan, S.H. as Substitute Registrar and in the presence of the Petitioner/his Attorneys, the Government, and the People's Legislative Assembly of the Republic of Indonesia or their representatives.

CHIEF JUSTICES,

signed.

PROF. Dr. JIMLY ASSHIDDIQIE, S.H.

JUSTICES,

signed.

PROF. Dr. H. M. LAICA MARZUKI, S.H.

signed.

DR. HARJONO, S.H., M.C.L.

signed.

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

signed.

MARUARAR SIAHAAN, S.H.

signed.

PROF. H.A. MUKHTIE FADJAR, S.H., M.S.

signed.

H. ACHMAD ROESTANDI, S.H.

signed.

I DEWA GEDE PALGUNA, S.H., M.H.

signed.

SOEDARSONO, S.H.

SUBSTITUTE REGISTRAR,

signed.

IDA RIA TAMBUNAN, S.H.