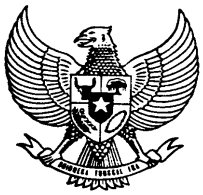

DECISION

Number 6/PUU-V/2007

FOR THE SAKE OF JUSTICE UNDER THE ONE ALMIGHTY GOD

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA

1. **PREAMBLE**

[1.1] Examining, hearing and deciding upon constitutional cases at the first and final level, has passed a Decision in the case of petition for judicial review of the Indonesian Criminal Code against the 1945 Constitution of the State of the Republic of Indonesia, filed by:

[1.2] **Dr. R. PANJI UTOMO**, occupation: Doctor/Director of FORAK (*Forum Komunikasi Antar Barak*) [Inter-Barrack Communication Forum] with his address at Jalan Raya Kodam Number 66 RT. 006/003, Pesanggrahan Sub-district, Pesanggrahan District, South Jakarta. Based on a Special Power of Attorney dated February 9, 2007 he authorized A.H. Wakil Kamal, S.H., Baginda Siregar, S.H., Muhammad Tohir, S.H., Muhammad Jusril, S.H., Guntoro, S.H., and Suhaedi, S.H., all as Advocates for *Masyarakat Hukum*

Indonesia (MHI) [Indonesian Law Community] with their legal domicile at Jalan Bunga Number 21 Matraman, East Jakarta 13140, Telephone 021-8583033, Fax. 021-85912405, e-mail infomhi@yahoo.com;

Hereinafter referred to as ---------- **Petitioner**;

[1.3] Having read the petition of the Petitioner;

[1.4] Having heard the statement of the Petitioner;

[1.5] Having heard and read the written statement of the Government;

[1.6] Having heard and read the written statement of the People's Legislative Assembly of the Republic of Indonesia;

[1.7] Having heard and read the written statement of the expert presented by the Petitioner;

[1.8] Having heard the statement of the Indonesian Criminal Code Revision Team of the Member of the People's Legislative Assembly of the Republic of Indonesia;

[1.9] Having read the concluding opinion of the Petitioner;

[1.10] Having examined the evidence;

3. LEGAL CONSIDERATIONS

[3.1] Considering whereas the purpose and objective of the *a quo* petition is to review Article 154, Article 155, Article 160, Article 161, Article 207, Article 208, and Article 107 of the Indonesian Criminal Code (hereinafter referred to as the Indonesian Criminal Code) against the 1945 Constitution of the State of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution);

[3.2] Considering whereas prior to further considering the substance of the *a quo* petition, the Constitutional Court (hereinafter referred to as the Court) shall first take the following matters into account:

1. Whether the Court has the authority to examine, hear, and decide upon the *a quo* petition;

2. Whether the Petitioner has the legal standing to qualify as a Petitioner before the Court in the *a quo* petition;

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

Authority of the Court

[3.3] Considering whereas regarding the authority of the Court, Article 24C Paragraph (1) of the 1945 Constitution states, among other things, that the Court has the authority to hear at the first and final level the decision of which shall be final to review a law against the 1945 Constitution. The provision is reaffirmed in Article 10 Paragraph (1) Sub-Paragraph a of Law

Number 24 Year 2003 regarding the Constitutional Court (hereinafter referred to as the Constitutional Court Law).

[3.4] Considering whereas the object of the petition filed by the Petitioner is a petition for judicial review of a law, *in casu* Article 154, Article 155, Article 160, Article 161, Article 207, Article 208, and Article 107 of the Indonesian Criminal Code against the 1945 Constitution, hence based on the abovementioned considerations, the Court declares to have the authority to examine, hear, and decide upon the *a quo* petition.

Legal Standing of the Petitioner

[3.5] Considering whereas in petitions for judicial review of laws against the 1945 Constitution, for the legal standing of an individual or a party to be accepted as a Petitioner before the Court, Article 51 Paragraph (1) of the Constitutional Court Law provides that the Petitioners shall be the parties which deem that their constitutional rights and/or authority are impaired by the coming into effect of a law, namely:

a. individual Indonesian citizens;

b. customary law community units insofar as they are still in existence and in line 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;

d. state institutions.

Whereas meanwhile, the Elucidation of Article 51 Paragraph (1) Sub-Paragraph a of the Constitutional Court Law affirms that the “individual” intended in Article 51 Paragraph (1) Sub-Paragraph a includes a group of individuals having a common interest;

[3.6] Considering whereas therefore, for an individual or a party to qualify as a Petitioner in a case of judicial review of a law against the 1945 Constitution, in accordance with the provision of Article 51 Paragraph (1) of the Constitutional Court Law, the intended individual or party must:

a. explain his/her qualification whether as individual Indonesian citizen, customary law community unit, legal entity, or state institution;

b. explain the impairment of his/her constitutional rights and/or authority, in the qualification as intended in Sub-Paragraph a, as a result of the coming into effect of the law petitioned for review;

[3.7] Considering whereas also, following the Decision of the Court Number 006/PUU-III/2005 until the present time, it has been the stand of the Court that in order to establish the existence of constitutional right/authority impairment, the following requirements must be fulfilled:

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

b. the Petitioner's 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, will take place for sure;

d. the existence of causal relationship (*causal verband*) between the impairment of rights and/or constitutional authority and the coming into effect of the law petitioned for review;

e. if the petition is granted, it is expected that such impairment of constitutional rights and/or authority will not or does not occur any longer;

[3.8] Considering whereas based on the description of the provision of Article 51 Paragraph (1) of the Constitutional Court Law and the requirements of the abovementioned impaired constitutional rights and/or authority, the Court will then consider the legal standing of the Petitioner in accordance with the Petitioner's description in his petition and relevant evidence;

[3.9] Considering whereas the Petitioner, dr. R. Panji Utomo, is an Indonesian citizen who has been tried and convicted with 3-month imprisonment based on the Decision of Banda Aceh Court of First Instance Number 232/Pid.B/2006/PN-BNA dated December 18, 2006 because he is proven to have committed a criminal offense as regulated in Articles 154 and 155 of the

Indonesian Criminal Code. In respect of the Decision of the Court, the Petitioner does not attempt for an appeal and hence the Decision has had binding legal force (*inkracht van gewijsde*);

[3.10] Considering whereas the constitutional rights of the Petitioner granted by the 1945 Constitution as specifically and actually deemed impaired by the Petitioner due to the coming into effect of Article 154 and Article 155 of the Indonesian Criminal Code, are the rights to legal certainty and freedom of expression, as regulated in Article 28, Article 28D Paragraph (1), and Article 28E Paragraph (2) and Paragraph (3) of the 1945 Constitution. Hence, the requirements for impairment of constitutional rights in Sub-Paragraph a through Sub-Paragraph d have been fulfilled. However, the next question is whether, if the *a quo* decision is granted, the impairment of the Petitioner's constitutional rights "will not or does not occur any longer" in view of the fact that the Petitioner has been convicted and has served his punishment;

[3.11] Considering whereas the substance of the petition filed by the Petitioner is to review general norms of law instead of personal rights, regardless of the fact that it was an individual who filed the petition. Whereas therefore, in every review of law, the definition of **constitutional impairment which will not or does not occur any longer** as intended by the abovementioned sub-paragraph e, must be interpreted as follows:

(i) in the event that the norm of the law petitioned for review does not exist, the Petitioner will never suffer from impairment of constitutional rights;

(ii) in the event that the norm of the law petitioned for review is abolished, the potential impairment to other parties will not occur any longer;

[3.12] Considering whereas based on the above description, the Court is of the opinion that insofar as it is related to Articles 154 and 155 of the Indonesian Criminal Code, the Petitioner has legal standing to act as a Petitioner in the *a quo* petition. Whereas in relation to Articles 107, 160, 161, 207, and 208 of the Indonesian Criminal Code, the Court is of the opinion that such articles are not relevant to the argument regarding the impairment of constitutional rights suffered by the Petitioner in the *a quo* petition, hence the provision of Article 51 Paragraph (1) of the Constitutional Court Law and the requirements for the impairment of constitutional rights as described above are not fulfilled. Whereas therefore, in respect of Articles 107, 160, 161, 207, and 208 of the Indonesian Criminal Code, the Court is of the opinion that the Petitioner does not have legal standing to petition for judicial review of the abovementioned articles, hence it is unnecessary for the Court to consider the constitutionality of norms contained in the abovementioned Articles 107, 160, 161, 207, and 208 of the Indonesian Criminal Code;

[3.13] Considering whereas because the Court has the authority to examine, hear, and decide upon the *a quo* petition and the Petitioner has legal standing to act as a Petitioner, hence the Court will consider the Principal Issue of the Petition;

Principal Issue of the Petition

[3.14] Considering whereas with the principal issue of the petition for judicial review of Articles 107, 160, 161, 207, and 208 of the Indonesian Criminal Code not being considered due to their irrelevance to the argued impairment of the Petitioner's constitutional rights, hence the Court will only consider the principal issue of the petition for a review of the constitutionality of legal norms contained in Articles 154 and 155 of the Indonesian Criminal Code which respectively read as follows:

- Article 154 of the Indonesian Criminal Code reads:

  "Whosoever declares feelings of hostility, hatred or contempt towards the Indonesian Government in public, shall be subject to a maximum imprisonment of seven years or a maximum fine of four thousand five hundred rupiah",

- Article 155 of the Indonesian Criminal Code reads:

  (1) "Whosoever broadcasts, presents or attaches writings or drawings in public containing statements of feelings of hostility, hatred or contempt towards the Indonesian Government, in the intention of publicly declaring their contents, shall be subject to a maximum imprisonment of four years and six months or a maximum fine of four thousand five hundred rupiah".

  (2) "If the person guilty of the commission of the abovementioned crime

while doing his occupation and at that time, a period of five years has not elapsed since his conviction becomes final due to similar crime, the party concerned may be prohibited from engaging in such occupation".

Whereas hence, the legal issue is whether it is true, as argued by the Petitioner, that the abovementioned provisions of Articles 154 and 155 of the Indonesian Criminal Code are contrary to Article 27 Paragraph (1), Article 28, Article 28C Paragraphs (1) and (2), Article 28D Paragraph (1), Article 28 E Paragraphs (2) and (3), and Article 28F of the 1945 Constitution;

[3.15] Considering whereas in order to support his arguments, the Petitioner has presented experts whose statements have been heard in the hearing, as completely set out in the Principal Case section of this Decision, which in essence describe the following:

[3.15.1] Expert Jayadi Damanik

According to the expert, Article 154 and Article 155 of the Indonesian Criminal Code are repressive provisions and giving excessive priviliges in protecting the interest of the government. The expert is also of the opinion that the articles are contrary to the principle of equality before the law, and have unintentionally reduced, hindered, limited, and/or eliminated the human rights of an individual or a group of individuals, and have accordingly violated the human rights;

[3.15.2] Expert Dr. Mudzakir, SH, MH:

According to the expert, Article 154 of the Indonesian Criminal Code contains a formula consisting of "*genus* offence" which underlies the prohibition of acts defined as "*species* offence" as referred to in Article 155, Article 156, and Article 157 of the Indonesian Criminal Code. The act interdicted in "*genus* offence" category is "declaring in public the feelings of hostility, hatred or contempt". Hence, Article 154 of the Indonesian Criminal Code is a double-edged provision. If it is objectively interpreted and appropriately put into effect in overcoming certain situations and conditions which threaten the state, it may be beneficial. Whereas conversely, if it is misused and subjectively interpreted according to the will of legal authorities, hence it may be disadvantageous and contrary to the principles in administering a democratic constitutional state.

The expert also mentioned that if Article 154 of the Indonesian Criminal Code is subjectively interpreted, it may be misused and may isolate the principle of *lex certa*. The formulation of the crime of "declaring the feelings of hostility, hatred or contempt" may be broadly interpreted in an all-encompassing manner that it may extend to other acts which should not be interdicted in criminal law because it is the right of the citizen guaranteed by the constitution, namely the freedom of opinion, as regulated in Article 28E Paragraph (3) of the 1945 Constitution which states that every individual is entitled to the freedom of association, assembly, and opinion.

[3.16] Considering whereas the Court has also read the written statement of the People's Legislative Assembly (DPR) dated May 8, 2007, which has been

completely set out in the Principal Case section of this Decision. In essence, the People's Legislative Assembly (DPR) does not deny the Petitioner of his right to express his opinion since it is guaranteed by the 1945 Constitution and is a realization of democracy. However, building democracy which conducts justice and protects human rights requires a safe, orderly, and peaceful environment. For that purpose, it is necessary that the right to express opinions in public be exercised responsibly in accordance with the provisions of applicable laws and certain limitations may be imposed in accordance with the provision of Article 28J Paragraph (2) of the 1945 Constitution. The People's Legislative Assembly (DPR) is of the opinion that there is no constitutionality issue of the legal norm petitioned for review in the *a quo* petition. What has been experienced by the Petitioner is solely the Petitioner's fault for not utilizing the legal measures which are rightfully the Petitioner's in accordance with the provisions of applicable laws. If the Petitioner deems himself innocent and his constitutional rights are impaired due to the criminal sanction imposition based on the provisions of articles in the Indonesian Criminal Code, the Petitioner should have utilized the abovementioned legal measures (appeal, cassation). Whereas in failing to utilize the legal efforts, the People's Legislative Assembly is of the opinion that the Petitioner has, *a contrario*, pleaded himself guilty.

[3.17] Considering whereas the Court has also read the written statement of the Government through its proxy namely the Minister of Law and Human Rights, which was received in the Constitutional Court Registrar's Office on April 19, 2007 which has been completely set out in the Principal Case of this

Decision. Whereas in line with the opinion of the People's Legislative Assembly in the abovementioned written statement, the Government does not deny the Petitioner of the possession of his constitutional rights underlying the *a quo* petition. The Government only highlights that the exercising of such rights must comply with the limitations as regulated in Article 28J Paragraph (2) of the 1945 Constitution. However, in its verbal statement during the court session, the Government also declares that an idea to alter the formulation of the offence in Article 154 of the Indonesian Criminal Code, namely from formal offence into material offence has been accepted in the latest concept of the Draft Law of the Indonesian Criminal Code.

[3.18] Considering whereas with due observance of all the above description, and other relevant evidence, the Court is of the following opinion:

[3.18.1] Whereas as affirmed by Article 1 Paragraph (3) of the 1945 Constitution, Indonesia is a constitutional state. The primary element or characteristic of a constitutional state is constitutionalism which demands the constitution, *in casu* the 1945 Constitution, be truly realized and enforced in practice. Laws, including the Indonesian Criminal Code, constitute a means to realize both the intention and the mandate of the constitution. Therefore, a law shall not be contrary to the 1945 Constitution, and hence laws must be available for review of their constitutionality against the 1945 Constitution. In addition, a constitutional state is also characterized by the guaranteed protection of the human rights. In fact, the history of a constitutional state and the constitution is

basically the history of the struggle for the recognition, guaranteed protection and enforcement of the human rights. Therefore, one of the reasons which may cause a law to be declared contrary to the constitution, *in casu* the 1945 Constitution, is that the intended law violates the human rights which in accordance with the Elucidation of Article 51 Paragraph (1) of the Constitutional Court Law are included in the definition of constitutional rights of citizens;

[3.18.2] Whereas, according to the Petitioner, the coming into effect of Articles 154 and 155 of the Indonesian Criminal Code has impaired his constitutional rights as regulated in:

- Article 27 Paragraph (1) of the 1945 Constitution regulating the citizens' equal status in the fields of law and government administration and the obligation to uphold the law and the government administration without exception;
- Article 28 of the 1945 Constitution regulating the freedom of association and assembly, and expression of thoughts verbally and in writing as regulated by law;
- Article 28C Paragraph (1) and Paragraph (2) of the 1945 Constitution which regulates the right to develop oneself through the fulfillment of basic needs, the right to obtain education and gain benefits from knowledge and technology, arts and culture, for the sake of improving the quality of one's life and for the sake of developing oneself in defending one's right collectively to build one's society, nation, and state;
- Article 28D Paragraph (1) of the 1945 Constitution which regulates the right to the recognition, guarantee, protection, and legal certainty as well as equal

treatment before the law;

- Article 28E Paragraph (2) and Paragraph (3) of the 1945 Constitution which regulates the freedom to adopt a belief, declare thoughts and actions, according to one's conscience, as well as the freedom of association, assembly, and opinion;
- Article 28F of the 1945 Constitution which regulates the right to communicate and obtain information in order to develop oneself and one's social environment, as well as the right to seek, obtain, own, keep, process, and deliver information through all channels available;

[3.18.3] Considering whereas one of the main arguments of the Petitioner in the petition for judicial review of Articles 154 and 154 of the Indonesian Criminal Code is based on the historical review where the Indonesian Criminal Code is a product of Dutch colonial rule, namely the *Wetboek van Strafrecht voor Nederlandsch-Indie* (*Staatsblad* 1915 Number 732), and hence no longer conforms to the spirit of the state of Indonesia as an independent state as well as a democratic constitutional state. Whereas therefore, prior to passing the decision regarding whether or not the provisions petitioned for review are constitutional, *in casu* Articles 154 and 155 of the Indonesian Criminal Code, the Court deems it necessary to firstly provide a historical review of the coming into effect of the Indonesian Criminal Code in Indonesia;

[3.18.4] Whereas, according to its history, it may be briefly stated that the presently applicable Indonesian Criminal Code is derived from the *Wetboek van*

Strafrecht of the Netherlands Year 1886 which was put into effect in Netherlands East Indies under the name of *Wetboek van Strafrecht voor Nederlandsch-Indie*. Following the independence of Indonesia, the *Wetboek van Strafrecht voor Nederlandsch-Indie* was put into effect based on the provision of Article II of the Transitional Provision to the 1945 Constitution (prior to the amendment) which reads, “All laws which are still in existence shall remain applicable insofar as there are no new laws according to this Constitution”. Whereas further, with several adjustments, the *Wetboek van Strafrecht voor Nederlandsch-Indie* was affirmed by Law Number 1 Year 1946 regarding Criminal Code Regulation in accordance with the legal system and the state administration system of the independent Indonesia.

When Indonesia became a federal country, with the establishment of the United States of the Republic of Indonesia (*RIS*) based on the Constitution of the United States of the Republic of Indonesia, and returned to the form of a unitary state based on the 1950 Provisional Constitution (*UUDS 1950*). Based on the provision of Article 142 of the 1950 Provisional Constitution, all regulations, laws, and administrative provisions which had existed since August 17, 1950 remained in effect and unchanged as regulations and provisions of the Republic of Indonesia, insofar as the regulations and provisions were not removed, supplemented, or amended by the law and administrative provisions by virtue of the 1950 Provisional Constitution.

Subsequently, as a result of the provision of the 1950 Provisional Constitution, hence there are two governing penal laws in Indonesia, namely:

(1) Penal Law existing on March 8, 1942 which was ratified and put into effect on February 26, 1946 and amended in accordance with the independent environment of Indonesia by Law Number 1 Year 1946 applicable in ex-territories of the Republic of Indonesia in its former form;

(2) Penal Law existing on August 17, 1950, namely the code from Dutch Rule era which had been amended and supplemented with the provisions in State Gazettes Year 1945 Number 134, Year 1946 Number 76, Year 1947 Year 1980, Year 1948 Number 169, Year 1949 Number 1 and Number 258, applicable to the Region of Greater Jakarta, ex-territories of East Sumatra State, ex-territories of East Indonesia State and West Kalimantan State.

Both penal laws were actually derived from the same source, namely the *Wetboek van Strafrecht* of the Netherlands which was subsequently, based on the principle of concordance, put into effect in Netherlands East Indies since 1918 under the name of *Wetboek van Strafrecht voor Nederlandsch-Indie* toward all social classes (*unificatie*), namely the Natives, foreign Orientals, and the Europeans, each group being previously governed by its own Criminal Code.

[3.18.5] Whereas, by describing the brief history of the Indonesian Criminal Code above as well as observing the politics of the penal law in Indonesia as an independent and sovereign state, as reflected in Law Number 1 Year 1946

juncto Law Number 73 Year 1958, it is vital to observe the provision of Article V of the Law Number 1 Year 1946 which reads, *"Penal provisions which are presently entirely or in part, unenforceable or* ***contrary to the position of the Republic of Indonesia as an independent state*** *or which no longer bear any meaning, must be deemed invalid in its entirety or in part"*. In other words, since 1946 the legislators had in fact been aware that there were provisions in the Criminal Code which could no longer be applied because they no longer conformed to the *position of the Republic of Indonesia as an independent state*. The Court is of the opinion that the phrase "the Republic of Indonesia as an independent state" must be interpreted as referring to the Republic of Indonesia established on the basis of the 1945 Constitution which in accordance with its Article 1 Paragraph (3) is a constitutional state. Therefore, the issue to be considered by the Court is whether Articles 154 and 155 of the Criminal Code, as quoted above, conform to the position of the Republic of Indonesia as an independent state based on the 1945 Constitution.

[3.18.6] Whereas the qualification of the offences or criminal acts formulated in the abovementioned Articles 154 and 155 of the Criminal Code are formal offences which require only the fulfillment of the element of a prohibited act (*strafbare handeling*) without relating it to the consequences of an act. As a result, the formulation of the two criminal articles may allow power abuse to occur because they may be easily interpreted according to the will of the authority. A citizen whose intention was to express his criticism or opinion against the Government, which is a constitutional right guaranteed by the 1945 Constitution,

would be easily qualified by the authority as expressing a statement of “feelings of hostility, hatred and contempt” towards the Government as a result of the lack of certainty of the criteria in the formulation of both Articles 154 and 155 of the Indonesian Criminal Code to distinguish between criticism or opinion and the feelings of hostility, hatred and contempt. Whereas because it is not necessary for the general prosecutor to prove whether a statement or opinion delivered by the citizen has truly resulted in the spreading or rising of hatred or hostility among the people at large ;

Articles 154 and 155 of the Indonesian Criminal Code may also be said as irrational, because it is impossible for a citizen of an independent and sovereign state to hold contempt towards his own independent and sovereign state and government, except in the case of subversive acts. However, the provisions regarding subversive acts have been separately regulated in another article and not in the abovementioned Articles 154 and 155 of the Indonesian Criminal Code. In the *Wetboek van Strafrecht* of the Netherlands itself, as previously mentioned to be the source of the Indonesian Criminal Code, there is no such provision as formulated in Articles 154 and 155 of the Indonesian Criminal Code. In fact, when the idea to include such provision in the Indonesian Criminal Code of the Netherlands in the 19th Century emerged, the incumbent Minister of Justice of the Netherlands explicitly expressed his refusal against such an idea by stating, “*De ondergeteekende zou deze bepalingen, welke op zichzelf te verklaren zijn door de behoefte van een koloniale samenleving, zeker niet voor het Rijk in Europa willen overnemen*” (The regulation below, is automatically

declared as applicable for the needs of the colonized society; it is clearly not intended for European states) [*vide* Prof. Mr. J.M.J. Schepper, "*Het gevaar voor de vrijheid van godsdienstige belijdenis te duchten van het in article 156 No. 1 SW. Omschreven haatzaaidelict"*, T. 143, pages 581-582]. History shows that the provisions in Articles 154 and 155 of the Indonesian Criminal Code were adopted by the colonial government of the Netherlands East Indies from Article 124a of the British Indian Penal Code Year 1915 which in India itself has been declared invalid by the Indian Supreme Court and the East Punjab High Court because it is considered contrary to Article 19 of the Indian Constitution regarding the freedom to have and express opinions. Whereas meanwhile, in the Netherlands itself, as touched upon above, such provision is also viewed as undemocratic since it is contrary to the idea of freedom of expression and opinion, and therefore may only be tolerated to be put into effect in colonized regions, *in casu* the Netherlands East Indies. Hence, it is evident that Articles 154 and 155 of the Indonesian Criminal Code, according to its history, were indeed intended to snare prominent figures of the independence movement in the Netherlands East Indies (Indonesia), so that it is also evident that both provisions are contrary to the position of Indonesia as an independent and sovereign state, as intended in Article V of Law Number 1 Year 1946 regarding the Penal Law Regulations;

[3.18.7] Whereas, being relevant to the *a quo* petition, the Court has also declared its stand in the Review of Articles 134, Article 136 *bis*, and Article 137 of the Indonesian Criminal Code, as reflected in Decision Number 013-022/PUU-IV/2006. In the legal considerations of the intended decision, it is stated that,

among other things, *"Indonesia as a democratic constitutional state in the form of a republic, the sovereignty of which is held by its people, and that highly respects human rights as stated in the 1945 Constitution, it is not relevant to have articles such as Article 134, Article 136 bis, and Article 137 in its Criminal Code that negate the principle of equality before the law and decrease the freedom to express ideas and opinions, the freedom to obtain information, and the principle of legal certainty. Therefore, the Draft Indonesian Criminal Code constituting an effort to reform the Indonesian Criminal Code colonially inherited must not contain any articles the provisions of which are identical or similar to Article 134, Article 136 bis, and Article 137 of the Indonesian Criminal Code"*;

[3.18.8] Whereas moreover, according to the statement from the Government, in the concept of the new draft of the Indonesian Criminal Code, although still containing provisions on similar criminal acts, the offence formulation no longer refers to formal offence but altered instead to material offence. It shows that there has been a change and simultaneously a renewal of the politics of the penal law towards an offence formulation which is not contrary to the spirit of realizing Indonesia as a democratic constitutional state and a democratic state based on the law which is the spirit (*geist*) of the 1945 Constitution.

4. CONCLUDING OPINION

[4.1] Based on all of the above, it is clear to the Court that the provisions of Articles 154 and 155 of the Indonesian Criminal Code, on the one hand, do not guarantee legal certainty and hence are contrary to Article 28D Paragraph (1) of the 1945 Constitution, on the other hand, as a consequence, disproportionally hinder the freedom to express thoughts and the freedom to express opinions and hence are contrary to Articles 28 and 28E Paragraph (2) and Paragraph (3) of the 1945 Constitution. Therefore, the Petitioner's argument insofar as it relates to the contradiction between Articles 154 and 155 of the Indonesian Criminal Code and Article 28 and 28E Paragraph (2) and Paragraph (3) of the 1945 Constitution must be declared as grounded.

[4.2] In view of Articles 56 Paragraphs (1), (2), and (3) and Article 54 Paragraphs (1) and (3) of Law 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);

5. RULINGS

Passing the Decision:

[5.1] To grant the petition of the Petitioner in part;

[5.2] To declare that Article 154 and Article 155 of the Indonesian Criminal Code are contradictory to the 1945 Constitution of the Republic of Indonesia;

[5.3] **To declare that Article 154 and Article 155 of the Indonesian Criminal Code have no binding legal effect**;

[5.4] **To declare that the rest of the petition of the Petitioner cannot be accepted (*niet ontvankelijk verklaard*)**;

[5.5] **To order the proper promulgation of this decision in the Official Gazette of the Republic of Indonesia**;

[5.6] Hence the decision was made in the Consultative Meeting of Constitutional Court Justices attended by nine Constitutional Court Justices on Monday, July 16, 2007, and was pronounced in the Plenary Session of the Constitutional Court open for public on this day, Tuesday, July 17, 2007, by us Jimly Asshiddiqie, as the Chairperson and concurrent Member, Harjono, I Dewa Gede Palguna, H.A.S. Natabaya, H.M. Laica Marzuki, Soedarsono, H. Abdul Mukthie Fadjar, H. Achmad Roestandi, and Maruarar Siahaan, respectively as Members, assisted by Alfius Ngatrin as the Substitute Registrar, and in the presence of the Petitioner and his Attorney-in-Fact, the People's Legislative Assembly or its representative, and the Government or its representative.

CHIEF JUSTICE,

SGD,

Jimly Asshiddiqie,

JUSTICES,

SGD,	**SGD,**
Harjono	**I Dewa Gede Palguna**
SGD,	**SGD,**
H.A.S Natabaya	**H. M Laica Marzuki**
SGD,	**SGD,**
Soedarsono	**H. Abdul Mukthie Fadjar**
SGD,	**SGD,**
H. Achmad Roestandi	**Maruarar Siahaan**

SUBSTITUTE REGISTRAR,

SGD,

Alfius Ngatrin