



**DECISION
Number 34/PUU-IX/2011**

FOR THE SAKE OF JUSTICE UNDER THE ONE ALMIGHTY GOD

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA

[1.1] Hearing constitutional cases at the first and final levels, has passed a decision in the case of Review of Law Number 41 Year 1999 concerning Forestry against the 1945 Constitution of the State of the Republic of Indonesia, filed by:

[1.2] Name : **Maskur Anang bin Kemas Anang Muhamad**
Place, date of birth : Jambi, March 15, 1956
Occupation : Private Person
Address : Jalan Dr. Setia Budi Nomor 51 Rajawali Sub-District, Jambi Timur District, Jambi City

By virtue of power of attorney dated May 10, 2011, granting power to **H.M. Ali Darma Utama, S.H., M.H.**, and **Ferry Anka Sugandar, S.H.,M.H.**, all of whom are advocates, having their address at Jalan Ciliwung Nomor 109-D, Cililitan, East Jakarta, to act individually or jointly as attorney-in-fact;

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

[1.3] Having read the petition of the Petitioner;

Having heard the statement of the Petitioner;

Having examined the evidence of the Petitioners;

Having heard and read the statement of the Government;

Having read the statement of the People's Legislative Assembly;

Having read the written conclusion of the Petitioner;

2. THE FACTS OF THE CASE

[2.1] Considering whereas the Petitioner filed a petition dated May 20, 2011 which was received at the Registrar's Office of the Constitutional Court (hereinafter referred to as the Registrar's Office of the Court) on Friday, May 20, 2011 under Deed of Petition File Receipt Number 201/PAN.MK/2011 and recorded in the Registry of Constitutional Cases under Number 34/PUU-IX/2011 on Tuesday, May 31, 2011, having been revised and received at the Registrar's Office of the Court on June 28, 2011, principally describing the following matters:

I. AUTHORITY OF THE COURT

1. Whereas under the provisions of Article 24C paragraph (1) of the third amendment to the 1945 Constitution of the State of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) *juncto* Article 10 of Law Number 24 Year 2003 concerning the Constitutional Court (hereinafter referred to as the Constitutional Court Law), stating that the Constitutional Court shall have the authority to hear cases at the first and final levels the

decisions of which shall be final to conduct review on laws under the 1945 Constitution of the State of the Republic of Indonesia, to decide disputes concerning to the authority of state institutions whose authority is granted by the 1945 Constitution of the State of the Republic of Indonesia, to make decisions on the dissolution of political parties and to decide disputes concerning the results of general elections.

2. Whereas by implementing Article 4 paragraph (2) sub-paragraph b {and accordingly, including paragraph (3) } of Law Number 41 Year 1999 concerning Forestry, it can be assured that the Petitioner's right to manage his palm oil plantation land whose right to management is in accordance with the following will be obstructed:
 - a. Plantation Location Permit of PT. Rickim Mas Jaya Number 042/BPN/II/1995 dated February 15, 1995 in an area of \pm 5,000 Ha;
 - b. Decision of the Head of Land Office of Batanghari Regency Number 86/BPN-VIII/1996 concerning the Granting of Location Permit for Palm Oil Plantation Purpose of PT. Rickim Mas Jaya dated August 21, 1996 in an area of \pm 5,200 Ha;

- c. Recommendation for Palm Oil Plantation Business from the Governor of Jambi Number 543.41/5308/V/Bappeda, dated July 31, 1996;
- d. Plantation Business Permit from the Minister of Agriculture Number HK.350/E5.860/10.96, dated October 10, 1996 concerning Palm Oil Plantation Business Principal Approval of PT. Rickim Mas Jaya in an area of \pm 14,000 Ha;

Therefore, there must be legal norm review under Article 4 paragraph (2) sub-paragraph b [and accordingly, including paragraph (3)] of Law Number 41 Year 1999 concerning Forestry under the 1945 Constitution of the State of the Republic of Indonesia, particularly Article 28A, Article 28D paragraph (1), Article 28G paragraph (1) and Article 28H paragraph (4) considering that the Petitioner has met the qualification as intended in the provisions of Article 51 paragraph (1) sub-paragraph a of the Constitutional Court Law.

- 3. Whereas, the Constitutional Court acts as a sole and the highest interpreter of the 1945 Constitution/the interpreter of the constitution as well as plays a role as the guardian of the constitution. Thus, the institution entitled to conduct review on laws under the 1945 Constitution is only the Constitutional Court.

4. Whereas, for the purpose of the above legal norm review, the Petitioner is of the opinion that this petition is consistent with Article 60 of Law Number 24 Year 2003 concerning the Constitutional Court.

5. Whereas, furthermore, Decision of the Constitutional Court Number 006/PUU-III/2005 and Decision Number 010/PUU-III/2005 have determined 5 requirements of constitutional impairment as intended in Article 51 paragraph (1) of the Constitutional Court Law, namely as follows:
 - a. The existence of constitutional rights and/or authority granted by the 1945 Constitution;

 - b. The constitutional rights and/or authority are considered to have been impaired by the coming into effect of the Law petitioned for review;

 - c. The impairment of such constitutional rights and/or authority must be specific and actual or at least potential in nature which, pursuant to logical reasoning, can be assured of occurring;

- d. There is a causal relationship (*causal verband*) between the impairment of constitutional rights and/or authority and the Law petitioned for review;
- e. The possibility that with the granting of the petition, the argued impairment of the constitutional rights and/or authority will no longer occur;

Whereas based on such criteria, the Petitioner is the party having a causal relationship (*causal verband*) between the constitutional impairment and the coming into effect of the implementation of the Law petitioned for review.

II. LEGAL STANDING OF THE PETITIONER

- 1. Whereas, Article 51 paragraph (1) of the Constitutional Court Law states that the Petitioner shall be the party who considers that his constitutional rights and/or authority is impaired by the coming into effect of the Law, namely as follows:
 - a. individual Indonesian citizens;
 - b. customary law community groups insofar as they are still in existence and in accordance with the development of the community and the principle of the Unitary State of the Republic of Indonesia regulated in law;

- c. public or private legal entities; or
- d. state institutions;

Elucidation of Article 51 paragraph (1) of the Constitutional Court Law states that as referred to as the “constitutional right” shall be the rights provided for by the 1945 Constitution.

2. Whereas, the Petitioner is the party who considers and even more, has felt that his constitutional rights and/or authority have been impaired by the provisions of Article 4 paragraph (2) sub-paragraph b [and accordingly, including paragraph (3)] of Law Number 41 Year 1999 concerning Forestry which gives freedom to the Minister of Forestry to stipulate the status of a certain area as a forest area or a forest area as a non-forest area, regardless of the burden of right to land granted by the state as occurred in the Petitioner’s land. The Minister of Forestry illegally “manipulated conversion” of an area of land located outside a forest area the allocation of which has not been determined as a forest area, but it has become a “Reserve Forest” as occurred in the Petitioner’s plantation land located in an Agricultural Farming area whereby the Minister of Forestry has converted and determined it as an Industrial Forest reserve. In addition to violating Article 5 of the Government Regulation Number 7 Year 1990 that the Minister of Forestry does

not have authority to reserve Industrial Forest in an Agricultural Farming, such policy obviously impairs the Petitioner's rights and/or authority as guaranteed and set forth in Article 28A, Article 28D paragraph (1), Article 28G paragraph (1) and Article 28H paragraph (4) of the 1945 Constitution.

III. SUBSTANCE OF THE PETITION

1. Whereas the Petitioner is of the opinion that legal norm review under Article 4 paragraph (2) sub-paragraph b [and accordingly, including paragraph (3)] of Law Number 41 Year 1999 concerning Forestry **(Exhibit P-1)** needs to be conducted as the implementation has impaired the Petitioner as the owner of the plantation land located in a land which has been subject to land right. However, manipulation of conversion to Industrial Forest has occurred to the land owned by the Petitioner which resulted in violation of the Petitioner's constitutional rights and authority as guaranteed by the 1945 Constitution, particularly Article 28A, Article 28D paragraph (1), Article 28G paragraph (1) and Article 28H paragraph (4).

- **Part of Law Number 41 Year 1999 concerning Forestry setting forth Forestry Concession is as follows:**

Article 4

(1).

(2).

a.

b. *determining the status of a certain area as a forest area or forest area as a non-forest area; and*

c.

(3). *Forestry concession by the State shall keep taking into account the right of customary law community insofar as they are still in existence and their existence is acknowledged, as well as they are consistent with the national interest.*

- **Furthermore, in the 1945 Constitution**

Article 28A states that

“Every person shall have the right to live and to defend his/her life and living.”

Article 28D states that

“Every person shall have the right to the recognition, the guarantee, the protection and the legal certainty of just laws as well as equal treatment before the law.”

Article 28G states that

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

Article 28H paragraph (4) states that

“Every person shall have the right to possess personal proprietary rights and such proprietary rights shall not be taken over arbitrarily by anybody.”

2. Whereas according to the Petitioner, the impairment of the Petitioner’s and/or other persons’ constitutional right and authority is a consequence of the conversion of land as occurred in case *a quo*, while in relation to Article 4 paragraph (2) sub-paragraph b [and accordingly, including paragraph (3) is also included] of Law Number 41 Year 1999 concerning Forestry, there is no legal paragraph asserting that forestry concession by the state shall also

keep taking into account the land which has been subject to land right under Law. Therefore, the Petitioner requested to add legal paragraph to the aforementioned Article 4 paragraph (3), so that it reads as follows:

(3). *Forestry concession by the State shall keep taking into account right of customary law community insofar as they are still in existence and their existence is acknowledged, the right to land which has been subject to land right under Law, as well as they are consistent with the national interest.*

3. Whereas the Petitioner is the legal owner of an area of Palm Oil Plantation located in Muaro Jambi Regency as a proliferation of new administrative region of Batanghari Regency, Jambi Province, based on:

a. Plantation Location Permit of PT. Rickim Mas Jaya Number 042/BPN/II/1995 dated February 15, 1995 in an area of ± 5,000 Ha that is also the land owned by the Petitioner's heir whose civil rights are acknowledged by the Government;
(Exhibit P-2)

b. Permit/recommendation for Palm Oil Plantation Business granted to PT. Rickim Mas Jaya by the Governor of Jambi

Number 593.41/5308/V/Bappeda, dated July 31, 1996;
(Exhibit P-3)

- c. Plantation Location Permit of PT. Rickim Mas Jaya, Decision of the Head of Land Office of Batanghari Regency Number 86/BPN/-VIII/1996 dated August 21, 1996 concerning the Granting of Location Permit for Palm Oil Plantation Purpose of PT. Rickim Mas Jaya in an area of \pm 5,200 Ha, that plantation works have been realized; **(Exhibit P-4)**
- d. Plantation Business Permit from the Minister of Agriculture Number HK.350/E5.860/10.96, dated October 10, 1996 concerning Palm Oil Plantation Business Principal Approval of PT. Rickim Mas Jaya in an area of \pm 14,000 Ha. **(Exhibit P-5)**
- e. Plantation Location Permit of PT. Rickim Mas Jaya Number 487 Year 2007, dated September 18, 2007, in an area of \pm 1,300 Ha, that the Principle Permit is enclosed with a map; **(Exhibit P-6)**
- f. Plantation Location Permit of PT. Rickim Mas Jaya Number 068B/BPN/VI/1996, dated June 17, 1996, in an area of \pm 5,000 Ha, that is in the process of permit extension administration; **(Exhibit P-7)**

- g. Location Permit of PT Ricky Kurniawan Kertapersada Number 01 Year 2000, in an area of \pm 1,000 Ha ; **(Exhibit P-8)**
 - h. Location Permit of PT Ricky Kurniawan Kertapersada Number 280 Year 2002, dated June 20, 2002, that an area of \pm 2,000 Ha that is still in the Petitioner's possession up to date (Maskur Anang) and that has obtained Land Use Right; **(Exhibit P-9)**
4. Whereas the function of the Petitioner's plantation land has been manipulated with the following description:
- a. Under Recommendation of the Governor of Jambi Number 522.11/0943/Dinhut/2004, Dated March 9, 2004 **(Exhibit P-10)** whereby made the Governor of Jambi was trapped, because the Governor of Jambi used to own the aforementioned land which have been transferred to the Petitioner based on Letter Number 037/GAKU/VII/1996 concerning the Principle Permit for the Transfer of Area of PT. Gilang Agrokarya Utama to PT. Rickim Mas Jaya dated July 17, 1996 **(Exhibit P-11)**. Subsequently, it was followed up by Mutual Agreement Letter between PT. Gilang

Agrokarya Utama and PT. Rickim Mas Jaya dated July 17, 1996 (**Exhibit P-12**).

- b. It was approved by the Minister of Forestry through Letter of the Minister of Forestry Number 277/Menhut-II/2004, Dated August 2, 2004 (in the status of a dispute) within a period of 1 (one) month following conversion *vide* Decree No. 277/Menhut-II/2004, dated August 2, 2004 (**Exhibit P-13**). Another approval was given through Letter of the Minister of Forestry Number 346/Menhut-II/2004, dated September 10, 2004. Such illegal conversion was closed by Decree of the Minister of Forestry Number 421/Kpts-II/1999, Dated June 15, 1999, in an area of $\pm 2,179,440$ Ha in Jambi Province which was misused by Forestry office to serve as a production forest.
5. Whereas, even though it has been rejected and prohibited by laws and regulations and is still in dispute, letter of the Minister of Forestry Number 1198/Menhut-IV/1997, Dated October 7, 1997 is still misused as a Legal basis. Forestry manipulation converted the Location Permit of Palm Oil Plantation of PT. Rickim Mas Jaya in an area of $\pm 10,200$ Ha and PT. Rickimas Rizky Putra in an area of $\pm 5,000$ Ha as well as PT Ricky Kurniawan Kertapersada in an area of $\pm 3,000$ Ha having been granted by the Government as

acknowledged in an Analysis of the Ministry of Forestry which cannot be contested by PT. Wira Karya Sakti in a Meeting on June 3, 2008 that the conversion of PT. Rickim Mas Jaya, PT. Rickimas Rizky Putra and PT Ricky Kurniawan Kertapersada is illegal. Based on a Map made by the Ministry of Forestry as an attachment to letter Number S.639/VII/Rhs/Pw-5.3.1/2008, Dated July 14, 2008 (**Exhibit P-14**), it is evident that the area of PT. Rickim Mas Jaya is located outside the Permit of PT. Wira Karya Sakti and it overlaps in an area of 1,905 Ha which constitutes the fact of the overlapping of rules in such Laws and Regulations as revealed in Letter of the Head of Forestry Service Office of Jambi Province Number 593.41B/3920/Dishut/2007, dated September 17, 2007, (**Exhibit P-15**) that abuse of power has been committed and there has also been a fraudulent element in the manipulation of such conversion.

6. Whereas, based on evidence and fact the community of Jambi Province is oppressed, repressed and tyrannized by the issuance of policy of the Minister of Forestry through Letter of the Minister of Forestry Number 1198/Menhut-IV/1997, Dated October 7 1997, concerning Addition to Industrial Forest of PT. Wira Karya Sakti in Jambi Province located in an area of \pm 76,100 Ha (**Exhibit P-16**) related to Letter of the Minister of Forestry Number 277/Menhut-II/2004, Dated August 2, 2004, Letter of the Minister of Forestry

Number 346/Menhut-II/2004, dated September 10, 2004 and Decree of the Minister of Forestry Number 421/Kpts-II/1999, Dated June 15, 1999.

7. Whereas, the Petitioner is the party who considers and even more, has felt that his constitutional rights and/or authority have been impaired by the policies of the Minister of Forestry issuing Letter Number 1198/Menhut-IV/1997, Dated October 7, 1997 with the aim of increasing Industrial Forest of PT. Wira Karya Sakti in Jambi Province located in an area of \pm 76,100 Ha which has been rejected by the National Land Agency of Jambi Province through its letter Number 540.1-2035 dated December 5, 1997 (**Exhibit P-17**), by the Regent of Batanghari through letter Number 522/435/Bappeda dated October 7, 1998 (**Exhibit P-18**) and through letter Number 520/079/Bappeda dated February 21, 2000 (**Exhibit P-19**) and by the Regional Office of Forestry through letter Number 724/Kwl-IIc/2000 dated April 14, 2000 (**Exhibit P-20**). Since it is inconsistent with Regional Government, Spatial Layout Plan, other Laws, Government Regulation Number 7 Year 1990 Article 5, the Ministry of Forestry does not have authority to reserve Industrial Forest in an Agricultural Farming Area.
8. Whereas, in relation to the case *a quo*, the Petitioner, under the condition of being oppressed, repressed and even more, being held

in detention, pursuant to Decision of High Court of Jambi Number 29/Pid/2011/PT.JBI dated April 26, 2011 (**Exhibit P-21**), has reported to and filed complaint to the Government through the Minister of Forestry, Attorney General (**Exhibit P-22**), National Police Chief (**Exhibit P-23**), the Corruption Eradication Commission (**Exhibit P-24**), Anti-Judicial Mafia TASK FORCE (**Exhibit P-25**), and the National Police Committee (**Exhibit P-26**), as well as the Minister of Law and Human Rights (**Exhibit P-27**). However, the response given and investigation conducted by them were only a courtesy. There was no chance to realize expectation of the Petitioner and his family who are currently suffering from destruction for being tyrannized. The last attempt made by the Petitioner was that he sought for justice from the Government through the Ministry of Forestry, and the Petitioner received unsatisfying response as the Government disclaimed it (**Exhibit P-28**). However, the Petitioner and his family put attention and high expectation to Your Excellency the Chief Justice of the Constitutional Court of the Republic of Indonesia and the Panel of Justices of the Constitutional Court of the Republic of Indonesia as a final resort to obtain the intrinsic justice from the State, if God Willing.

9. Whereas, all attempts and struggle by the Petitioner were based on belief that **ILLEGAL LETTER**, namely Letter of the Minister of Forestry Number 1198/Menhut-IV/1997, Dated October 7, 1997, was manipulated into Decree Number 277/Menhut-II/2004, dated August 2, 2004 and in the period of one month it was manipulated again into Decree Number 346/Menhut-II/2004, dated September 10, 2004 and was used to manipulate the Petitioner into being repressed and oppressed which extremely harmed the Petitioner. The PETITIONER noticed that there was manipulation of Law (**Judicial Mafia**) based on legal proof in 2 cases all at once which had to be encountered by the Petitioner, namely as follows:

1) Case in District Court of Sengeti:

- a) Charge by Sengeti Public Prosecutor under Case Reg. Number PDM-178/SGT/10/2010, dated October 26, 2010 (**Exhibit P-29**) based on **Fictitious Decree**, namely **Letter of the Minister of Forestry No. 277/Menhut-II/2004, Dated August 2, 2004** and **Letter of the Minister of Forestry Number 346/Menhut-II/2004, Dated September 10, 2004**, so that the Petitioner was detained for a period of 7 months up to date.

- b) Demurrer from the Petitioner's Lawyer (**Exhibit P-30**) that this Case was a Civil Case which made as a Criminal Case.
 - c) Decision of District Court of Sengeti Number 183/Pid.B/2010/PN.SGT, dated February 22, 2010 (**Exhibit P-31**) that detention of the Petitioner is inconsistent with the Constitution.
 - d) Decision of District Court of Jambi Number 29/Pid/2011/PT.JBI, Dated April 26, 2011 (**Exhibit P-32**), serving as evidence and fact that conspiracy has been committed by state administrators in the Field of Law in Jambi province, has abused power and authority in the law enforcement conducted inappropriately, which was full of manipulation and whereby bribery case existed. Therefore, pursuant to the letter of the Chief Prosecutor's Office of Jambi, the said Public Prosecutor is a **disgraceful Prosecutor.** (**Exhibit P-33**).
- 2) **Case in District Court of Jambi:**
- a. Charge by Public Prosecutor of the Chief Prosecutor's Office of Jambi under Case Reg. Number PDM-

64/JBI/2/2011, dated February 24, 2011 (**Exhibit P-34**) was also based on **Letter of the Minister of Forestry No. 277/Menhut-II/2004, Dated August 2, 2004** and **Letter of the Minister of Forestry Number 346/Menhut-II/2004, Dated September 10, 2004 (ILLEGAL DECREE or FICTITIOUS DECREE)**.

- b. Case in District Court of Jambi in the Stipulation of District Court of Jambi Number 102/Pid.B/2011/PN.JBI, Dated February 28, 2011 (**Exhibit P-35**).
 - c. Objection (DEMURRER) from my Lawyer on April 6, 2011 (**Exhibit P-36**), that this Case is actually a Civil Case, since pursuant to Location Permit Number 280 Year 2002, an area of \pm 2,000 Ha is still in the Petitioner's possession up to date and has obtained a Land Use Right in accordance with letter of PT. Ricky Kurniawan Kertapersada Number RKK/009-A/X/2003, dated October 16, 2003.
10. Whereas, in the case *a quo* the Petitioner was extremely impaired for being subject to 7-month imprisonment by virtue of Decision of High Court of Jambi Number 29/Pid/2011/PT.JBI dated April 26,

2011 in Cassation Level. The Petitioner was extremely impaired due to the following reasons with respect to the Petitioner's Business:

- a. Since 1997, the plantation areas of the Petitioner, PT. Rickim Mas Jaya, PT. Rickimas Rizky Putra and PT Ricky Kurniawan Kertapersada were manipulated in an area of ± 18,200 Ha.
- b. PT. Rickim Mas Jaya Sakti was manipulated by Article 4 paragraph (2) sub-paragraph b in an area of ± 65,500 Ha **(Exhibit P-37)**
- c. Administration of the signing of Recommendation from the Governor of South Sumatra with respect to PT. Rickim Mas Jaya's ownership of Forest Products Exploitation Business License-Natural Forest (IUPHHK-HA) in an area of ± 8,100 Ha **(Exhibit P-38)** was abandoned due to the detention of the Petitioner.
- d. Administration of Permission and the on-site Implementation with respect to PT. Pesona Belantara Persada's ownership of Forest Products Exploitation Business License-Natural Forest (IUPHHK-HA) in an area of ± 22,000 Ha **(Exhibit P-39)** was abandoned due to the detention of the Petitioner.

- e. Administration of Permission and the on-site Implementation with respect to PT. Tiesico Cahaya Pertiwi's ownership of Forest Products Exploitation Business License-Natural Forest (IUPHHK-HA) in an area of ± 5,400 Ha (**Exhibit P-40**) was abandoned due to the detention of the Petitioner.
 - f. Farmer Group's Land as Plasma from PT. Rickim Mas Jaya in an area of ± 1,500 Ha was cancelled by Farmers due to the detention of the Petitioner.
 - g. Fishery business in an area of ± 60 Ha was abandoned due to the detention.
 - h. Education of the Petitioner's children are postponed and threatened to fail.
 - i. Reputation of the Petitioner and his family was defamed and oppressed.
11. Whereas, the matters conveyed by the Petitioner actually are general issues in Jambi society (**Exhibit P-41**). Up to date, there has been no way out to the best possible settlement. Therefore, the **Petitioner fully expected** through the Constitutional Court and to Your Excellency Justices of the Constitutional Court that forestry concession by the State can be exercised to the best extent

possible in the future under rules of paragraphs of law guaranteeing legal certainty in the midst of the community.

IV. *PETITUM*

Based on the reasons and matters as mentioned above, the Petitioner petitions the Constitutional Court to pass the following decisions:

1. To accept and grant the Petitioner's Petition in its entirety;
2. To declare that Article 4 paragraph (2) sub-paragraph b [and accordingly, including paragraph (3)] of Law Number 41 Year 1999 concerning Forestry may impair the constitutional rights and/or authority of the Petitioner and, even more, public at large, so that it is inconsistent with the 1945 Constitution of the State of the Republic of Indonesia, particularly Article 28A, Article 28D paragraph (1), Article 28G paragraph (1) and Article 28H paragraph (4);
3. To declare that Article 4 paragraph (3) of Law Number 41 Year 1999 concerning Forestry should read as follows: "*Forestry concession by the State shall keep taking into account the right of customary law community insofar as they are still in existence and their existence is acknowledged, **the right to land which has been***

subject to land right under law as well as is consistent with the national interest.”

4. To order the promulgation of this decision properly in the Official Gazette of the Republic of Indonesia.

Or if the Panel of Justices of the Constitutional Court of the Republic of Indonesia has a different opinion, decisions shall be made by principles of what is fair and just (*ex aequo et bono*).

[2.2] Considering whereas in order to substantiate his arguments, the Petitioner has presented instruments of evidence in the form of letters and articles marked as exhibits P-1 through P-41, namely as follows:

1. Exhibit P-1 : Photocopy of Law Number 41 Year 1999 concerning Forestry;
2. Exhibit P-2 : Photocopy of Decision of the Head of Office of Batanghari Regency Number 042/BPN/II/1995 concerning the Granting of Location Permit for Purpose of PT. Rickim Mas Jaya, dated February 15, 1995;
3. Exhibit P-3 : Photocopy of Permit/Recommendation for Palm Oil Plantation Business to PT. Rickim Mas Jaya from the

Governor of Jambi Number 543.41/5308/V/Bappeda,
dated July 31, 1996;

4. Exhibit P-4 : Photocopy of Plantation Location Permit of PT. Rickim Mas Jaya, Decision of the Head of Land Office of Batanghari Regency Number 86/BPN/-VIII/1996 dated August 21, 1996 concerning the Granting of Location Permit for Palm Oil Plantation Purpose of PT. Rickim Mas Jaya;
5. Exhibit P-5 : Photocopy of Plantation Business Permit from the Minister of Agriculture Number HK.350/E5.860/10.96, dated October 10, 1996 concerning Palm Oil Plantation Business Principal Approval of PT. Rickim Mas Jaya;
6. Exhibit P-6 : Photocopy of Decision of the Regent of Muaro Jambi Number 487 Year 2007 related to Plantation Location Permit of PT. Rickim Mas Jaya, dated September 18, 2007;
7. Exhibit P-7 : Photocopy of Plantation Location Permit of PT. Rickim Mas Jaya Number 068B/BPN/VI/1996, dated June 17, 1996;

8. Exhibit P-8 : Photocopy of Location Permit of PT Ricky Kurniawan Kertapersada Number 01 Year 2000;
9. Exhibit P-9 : Photocopy of Location Permit of PT Ricky Kurniawan Kertapersada Number 280 Year 2002, dated June 20, 2002;
10. Exhibit P-10 : Photocopy of Recommendation of the Governor of Jambi Number 522.11/0943/Dinhut/2004, dated March 9, 2004;
11. Exhibit P-11 : Photocopy of Letter of the Governor of Jambi Number 037/GAKU/VII/1996;
12. Exhibit P-12 : Photocopy of Mutual Agreement Letter between PT. Gilang Agrokarya Utama and PT. Rickim Mas Jaya dated July 17, 1996;
13. Exhibit P-13 : Photocopy of Decree of the Minister of Forestry Number 277/Menhut-II/2004, dated August 2, 2004;
14. Exhibit P-14 : Photocopy of a Map produced by the Ministry of Forestry as an attachment to letter Number S.639/VII/Rhs/Pw-5.3.1/2008, dated July 14, 2008;

15. Exhibit P-15 : Photocopy of Letter of the Head of Forestry Service Office of Jambi Province Number 593.41B/3920/Dishut/2007, dated September 17, 2007;
16. Exhibit P-16 : Photocopy of Letter of the Minister of Forestry Number 1198/Menhut-IV/1997, dated October 7, 1997;
17. Exhibit P-17 : Photocopy of Letter of the National Land Agency Number 540.1-2035, dated December 5, 1997;
18. Exhibit P-18 : Photocopy of Letter of the Regent of Batanghari Number 522/435/Bappeda, dated October 7, 1998;
19. Exhibit P-19 : Photocopy of Letter of the Regent of Batanghari Number 520/079/Bappeda, dated February 21, 2000;
20. Exhibit P-20 : Photocopy of the Regional Office of Forestry through letter Number 724/Kwl-IIc/2000, dated April 14, 2000;
21. Exhibit P-21 : Photocopy of Decision of High Court of Jambi Number 29/Pid/2011/PT.JBI, dated April 26, 2011;
22. Exhibit P-22 : Photocopy of Report and complaint to Attorney General;

23. Exhibit P-23 : Photocopy of Report and complaint to the National Police Chief;
24. Exhibit P-24 : Photocopy of Report and complaint to the Corruption Eradication Commission;
25. Exhibit P-25 : Photocopy of Report and complaint to the Anti-Judicial Mafia Task Force;
26. Exhibit P-26 : Photocopy of Report and complaint to the National Police Committee;
27. Exhibit P-27 : Photocopy of Report and complaint to the Minister of Law and Human Rights;
28. Exhibit P-28 : Photocopy of Letter of the Department of Forestry Number S.558/KUM-3/2010, dated July 15, 2010;
29. Exhibit P-29 : Photocopy of the Petitioner's Charge;
30. Exhibit P-30 : Photocopy of Demurrer to Case Number 183/Pid.B/2010/PN.SGT;
31. Exhibit P-31 : Photocopy of Excerpt from Decision of Case Number 183/Pid.B/2010/PN.SGT;
32. Exhibit P-32 : referring to exhibit P-21;

33. Exhibit P-33 : Photocopy of Summons of the Chief Prosecutor's Office of Jambi Number B-1211/N.5.7/Hkt.1/05/2011;
34. Exhibit P-34 : Photocopy of Charge of Case Number PDM-64/JBI/2/2011;
35. Exhibit P-35 : Photocopy of Stipulation of 102/Pen.Pid/2011/PN JAMBI;
36. Exhibit P-36 : Photocopy of Demurrer to Case Number 102/Pen.Pid/2011/PN JAMBI;
37. Exhibit P-37 : Photocopy of Letter of the Regent of Bungo Number 661/231L/PEM, dated October 18, 2006;
38. Exhibit P-38 : Photocopy of Letter of the Regent of Musi Banyuasin Number 522/408/IV/2010, dated March 2, 2010;
39. Exhibit P-39 : Photocopy of Letter of the Governor of South Sumatra Number 522.21/3999/Dishut/2007 dated September 17, 2007;
40. Exhibit P-40 : Photocopy of Decision of the Regent of Musi Banyuasin Number 500/1163/IV/2002 dated June 3, 2002;

41. Exhibit P-41 : Photocopy of Letter of Regional Secretariat dated March 3, 2008;

[2.3] Considering whereas with respect to the Petitioner's petition, the Government provided written statement at the hearing on July 26, 2011 and such written statement was received at the Registrar's Office of the Court on July 28, 2011 principally describing the following matters:

I. SUBSTANCE OF THE PETITION

- a. Whereas the Petitioner, in his capacity as an Indonesian citizen, filed a petition for constitutional review of the provisions of Article 4 paragraph (2) sub-paragraph b and paragraph (3) of Law Number 41 Year 1999 concerning Forestry (hereinafter referred to as Law Number 41/1999) since it is considered to be inconsistent with the provisions of Article 28A, Article 28D paragraph (1), Article 28G paragraph (1) and Article 28H paragraph (4) of the 1945 Constitution of the State of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution);
- b. Whereas according to the Petitioner, by the implementation of the provisions of Article 4 paragraph (2) sub-paragraph b and paragraph (3) of Law *a quo*, it can be assured that the Petitioner's right to manage his palm oil plantation land, whose right to management is in accordance with the following, will be obstructed:

- 1) Plantation Location Permit of PT. Rickim Mas Jaya Number 042/BPN/II/1995 dated February 15, 1995 in an area of \pm 5,000 hectares;
 - 2) Decision of the Head of Land Office of Batanghari Regency Number 86/BPN/-VIII/1596 concerning the Granting of Location Permit for Palm Oil Plantation Purpose of PT. Rickim Mas Jaya dated August 21, 1996 in an area of \pm 5,200 hectares;
 - 3) Recommendation for Palm Oil Plantation Business from the Governor of Jambi Number 543.41/5308/V/Bappeda, dated July 31, 1998;
 - 4) Plantation Business Permit from the Minister of Agriculture Number HK.350/E5.860/10.96, dated October 10, 1996 concerning Palm Oil Plantation Business Principal Approval of PT. Rickim Mas Jaya in an area of \pm 14,000 hectares;
- c. Whereas according to the Petitioner, the provisions of Article 4 paragraph (2) sub-paragraph b and paragraph (3) of Law *a quo* which reads, "Forestry concession by the State as intended in paragraph (1) shall authorize the Government to determine the status of a certain area as a forest area or forest area as a non-

forest area” and paragraph (3) of Law *a quo* which reads, “Forestry concession by the state shall keep taking into account the right of customary law communities insofar as they are still in existence and their existence is acknowledged as well as they are consistent with the national interest”, are considered to be inconsistent with the provisions of Article 28A, Article 28D paragraph (1), Article 28G paragraph (1) and Article 28H paragraph (4) of the 1945 Constitution which respectively shall read as follows:

Article 28A:

“Every person shall have the right to live and to defend his/her life and living.”

Article 28D paragraph (1):

“Every person shall have the right to the recognition, the guarantee, the protection and the legal certainty of just laws as well as equal treatment before the law.”

Article 28G paragraph (1):

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

Article 28H paragraph (1):

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.

- d. Whereas according to the Petitioner, the abovementioned impairment of constitutional rights and authority is caused by land conversion in which the Petitioner's plantation land is considered to have been manipulated, namely by the issuance of Letter of the Minister of Forestry Number 1198/Menhut-IV/1997, dated October 7, 1997 and Decree of the Minister of Forestry Number 277/Menhut-II/2004, dated August 2, 2004 and Decree Number 346/Menhut-II/2004, dated September 10, 2004.
- e. Whereas according to the Petitioner, in addition to the abovementioned constitutional impairment, it has also resulted in another impairment, namely 7-month detention of the Petitioner by virtue of Decision of District Court of Sengeti Number 183/Pid.B/2010/PN.SGT, dated February 22, 2011, Stipulation of District Court of Jambi Number 102/Pid.B/2011/PN.JBI, dated February 28, 2011 and Decision of High Court of Jambi Number 29/Pid/2011/PT.JBI dated April 26, 2011.

II. LEGAL STANDING OF THE PETITIONER

Pursuant to Article 51 paragraph (1) of Law Number 24 Year 2003 concerning the Constitutional Court, it is stated that the Petitioner shall be the party who considers that his constitutional rights and/or authority are impaired by the coming into effect of the law, namely as follows:

- a. individual Indonesian citizens;
- b. customary law community groups insofar as they are still in existence and in accordance with the development of the community and the principle of the unitary state of the Republic of Indonesia regulated in Law;
- c. public or private legal entities; or
- d. state institutions;

The above provisions are asserted in the elucidation thereof that as referred to as “constitutional rights” shall be the rights provided for in the 1945 Constitution of the State of the Republic of Indonesia.

Furthermore, Article 51 paragraph (1) of Law Number 24 Year 2003 concerning the Constitutional Court Law provides cumulative definition and limitation on the impairment of the Petitioner’s constitutional rights and/or authority which must meet 5 (five) requirements, namely as follows:

- a. the existence of constitutional rights of the Petitioner granted by the 1945 Constitution of the State of the Republic of Indonesia;
- b. the Petitioner considers that such constitutional rights have been impaired by the coming into effect of the Law petitioned for review;
- c. the impairment of such constitutional rights must be specific and actual or at least potential in nature which, pursuant to logical reasoning, can be assured of occurring;
- d. there is a causal relationship (*causal verband*) between the impairment and the coming into effect of the law petitioned for review;
- e. the possibility that with the granting of the petition, the argued impairment of such constitutional rights will not or will no longer occur;

Based on the abovementioned matters, according to the Government, the Petitioner's interest needs to be questioned whether it is proper as the party believing that his constitutional rights and/or authority are impaired by the coming into effect of the provisions of Article 4 paragraph (2) sub-paragraph b and paragraph (3) of Law *a quo*. Also, whether the said constitutional impairment of the Petitioner is specific and actual or at least potential in nature which, pursuant to logical reasoning, can be assured of occurring, and what is the causal relationship (*causal verband*) between the impairment and the coming into effect of the Law petitioned for review.

In order for a person or a party to be accepted as a Petitioner having legal standing in the petition for Review of Law against the 1945 Constitution of the State of the Republic of Indonesia, the following matters must first be explained and substantiated:

- a. his qualification in petition *a quo* as mentioned in Article 51 paragraph (1) of Law Number 24 Year 2003 concerning the Constitutional Court;
- b. the constitutional rights and/or authority in the said qualification are considered to have been impaired by the coming into effect of the Law reviewed;
- c. the impairment of Petitioner's constitutional rights and/or authority as the result of the coming into effect of the Law petitioned for review.

In the entire description of his petition, the Petitioner did not expressly specify his legal standing, whether the capacity of the Petitioner is as an individual Indonesian citizen or as a private legal entity, considering that the Petitioner argued as the Owner of PT. Rickim Mas Jaya, PT. Rickimas Rizky Putra and PT Ricky Kurniawan Kertapersada whose areas is converted into a forest area pursuant to Letter of the Minister of Forestry Number 1198/Menhut-II/1997, dated October 7, 1997, Recommendation of the Governor of Jambi Number 522.11/0943/Dinhut/2004, dated March 9, 2004, Letter of the Minister of Forestry Number 277/Menhut-IV/2004, dated August 2, 2004 and Decree of the

Minister of Forestry Number 277/Menhut-II/2004, dated August 2, 2004, as well as Decree of the Minister of Forestry Number 346/Menhut-II/2004 dated September 10, 2004.

In addition, the Petitioner also did not specify his capacity in the abovementioned private legal entity, whether acting in his capacity as the commissioner, director or other capacities having authority to act, either inside or outside the company.

Based on the foregoing, legal standing of the Petitioner is unclear (vague), so that the qualification as required in Article 51 paragraph (1) of Law Number 24 Year 2003 concerning the Constitutional Court is not met.

Furthermore, according to the Government, it needs to be questioned whether it is true or not that the Petitioner experienced constitutional impairment due to the coming into effect of the provisions of Article 4 paragraph (2) subparagraph b and paragraph (3) of Law Number 41 Year 1999 concerning Forestry which stipulate that forestry concession by the state as intended in paragraph (1) shall authorize the Government to determine the status of a certain area as a forest area or forest area as a non-forest area” and paragraph (3) of Law *a quo* which reads, “Forestry concession by the state shall keep taking into account the right of customary law communities insofar as they are still in existence and their existence is acknowledged”. Since the Petitioner in his petition description also did not explain the constitutional rights and or authority

impaired by the coming into effect of the provisions petitioned for review. The Petitioner only mentioned articles in the 1945 Constitution of the State of the Republic of Indonesia, namely Article 28A, Article 28D paragraph (1), Article 28G paragraph (1) and Article 28H paragraph (4) without giving details on and describing the Petitioner's constitutional rights and or authority impaired. In other words, the Petitioner was unable to expressly and clearly construct the constitutional impairment experienced by the Petitioner.

Furthermore, the Government will describe whether it is true or not that the impairment argued by the Petitioner is constitutional impairment caused by the coming into effect of the aforementioned provisions petitioned for review for the following reasons:

1. The Petitioner, in his entire description of the petition, expressly stated and acknowledged that the impairment experienced resulted from the implementation of the aforementioned provisions petitioned for review, namely the conversion by the Government of plantation area/land which is argued to be the property of PT. Rickim Mas Jaya, PT Ricky Kurniawan Kerta persada and PT. Rickimas Rizkiputra, through letter of the Minister of Forestry Number 1198//Menhut-II/1997 concerning Addition to Industrial Forest of PT. Wira Karya Sakti, Letter of the Minister of Forestry Number 277/Menhut-II/2004 concerning Designation of Areas for Other Utilization in an area of + 6,710 hectares located in Tanjung Jabung Timur Regency- Jambi Province as Forest Area with Permanent Production Forest

- Function and Decree of the Minister of Forestry Number 345/Menhut-II/2004, as well as Decree of the Minister of Forestry Number 421/Kpts-II/1999 concerning Designation of Forest Area in Level I Region Province of Jambi in an area of $\pm 2,179,440$ hectares.
2. The impairment experienced by the Petitioner, according to the Government, is related to decision of State Administration official which is in this case related to Decree of the Minister of Forestry. Therefore, according to the Government, there is no causal relationship (*causal verband*) between the impairment experienced by the Petitioner and the aforementioned provisions petitioned for review.
 3. Based on the foregoing, according to the Government, the Petitioner should take remedies through other judicial institutions (State Administration Court or District Court), rather than reviewing the provisions of Article 4 paragraph (2) sub-paragraph b and paragraph (3) of the Forestry Law to the Constitutional Court, or in other words, the Petitioner's petition was misdirected.

The Government may also state that, if it is true *–quod non–*, the assumption of impairment caused by the change of the status of an area for other utilization which is argued to be the property of the Petitioner is no longer valid, with the following explanation:

1. Under Letter of the Minister of Forestry Number 1198/Menhut-IV/1997, dated October 7, 1997 to the President Director of PT. Wira Karya Sakti, the Minister of Forestry instructed PT. Wira Karya Sakti to immediately resolve the problems occurred (including to the Petitioner) in relation to Industrial Forest area reserve principal approval.
2. Under Deed of Notary Nany Wardianialis, S.H., Notary in Jambi, Number 22 dated October 11, 1999, the Petitioner entered into an agreement on transfer of area/land to PT. Wira Karya Sakti (PT. WKS) in an area of 1,140 hectares which was subsequently followed up by an agreement on payment of money in the amount of Rp142,000,000 (one hundred and forty-two million) by PT. WIRA KARYA SAKTI to the Petitioner pursuant to Notarial deed Number 23 dated October 11, 1999;
3. Under Deed of Notary Nany Wardianialis, S.H., Notary in Jambi, Number 24 dated October 11, 1999, the Petitioner entered into an agreement on transfer of area/land to PT. Wira Karya Sakti (PT. WKS) in an area of 3,000 hectares which was subsequently followed up by an agreement on payment of money in the amount of Rp250,000,000 (two hundred and fifty-two million) by PT. Wira Karya Sakti to the Petitioner pursuant to Notarial Deed Number 25 dated October 11, 1999;
4. Under Deed of Notary Nany Wardianialis, S.H., Notary in Jambi, Number 26 dated October 11, 1999, the Petitioner entered into an agreement on

transfer of area/land to PT. Wira Karya Sakti (PT. WKS) in an area of 5,555 hectares which was subsequently followed up by an agreement on payment of money in the amount of Rp694,374,000 (six hundred ninety-four million three hundred and seventy-four thousand rupiah) by PT. Wira Karya Sakti to the Petitioner pursuant to Notarial Deed Number 27 dated October 11, 1999;

5. Whereas the boundary of the aforementioned area/land agreed had been measured and managed pursuant to Notarial deed Number 44, Number 45 and Number 46 respectively dated December 14, 1999 pointing that the Petitioner and PT. WIRA KARYA SAKTI stated that the map issued by the related institution was in accordance with Minutes of Spot Check and Determination of Plantation Location Permit Boundary of PT. Ricky Mas Jaya, PT. Ricky Mas Rizkiputra and PT Ricky Kurniawan Kertapersada dated November 30, 1999 served as the basis to determine the boundary of the area/land as intended in the agreement on the hand-over and transfer of land area dated October 11, 1999, Number 22, Number 24 and Number 26.

Based on the above-mentioned facts, it is clear and obvious that **there is no longer any impairment** suffered by the Petitioner as a result of the conversion of area for other utilization in an area of $\pm 6,710$ hectares to forest area which was subsequently converted to additional area of Industrial Area in the name of PT. Wira Karya Sakti.

Accordingly, based on the entire explanation above, according to the Government, it is clear, obvious and express that the Petitioner could not explain the constitutional impairment caused by the coming into effect of the aforementioned provisions petitioned for review. Therefore, it would be proper for the Chief Justice/Panel of Justices of the Constitutional Court to state that the Petitioner did not have legal standing, so that the Petitioner's petition should be declared inadmissible (*niet onvankelijk verklaard*).

III. THE GOVERNMENT'S EXPLANATION ON THE MATERIAL BEING PETITIONED FOR REVIEW

a. Background

The provisions of Article 33 paragraph (3) of the 1945 Constitution specifies that land and water and the natural resources contained therein shall be managed by the State and shall be used for the greatest prosperity of the people. Whereas the reason for the management of land and water and the natural resources contained therein is that the land and water and the natural resources are the essence of the prosperity of the people. As the manifestation of Article 33 paragraph (3) of the 1945 Constitution, forests, as a gift from the One Almighty God, which play a very important role namely as the national development capital and also functions as one of the determiners of life support system, must be managed by the state.

Forests, as a gift and trust from the One Almighty God granted to Indonesia which constitutes non-valuable natural resources, should be thankful for. The gift granted by Him must be considered as trust, therefore forests must be administered and utilized with a noble character in the context of devotion as the actualization of gratitude to the One Almighty God (elucidation of Law Number 41 Year 1999 concerning Forestry, paragraph 1).

As the national development capital, forests possess real benefits for the life and living of Indonesian nation, either ecological, social and cultural or economic benefits which are balanced and dynamic in nature. Therefore, forests must be administered and managed, protected and utilized on a sustainable basis for the prosperity of Indonesian people, both present and future generations.

Furthermore, in its function as one of the determiners of life support system, forests have been providing great benefits to human beings. Therefore, its preservation must be maintained. Forests play a role as a means of harmonization and balance of global environment, and therefore its relation to international world is very important by keeping the priority for the National interest. In line with Article 33 paragraph (3) of the 1945 Constitution and considering the importance of role and the greatness of benefits of forests for Indonesian nation, forests shall be managed by the state. The forestry concession does not possess the nature of ownership as the ownership of

properties in civil law, yet granting certain authority to the State to do or not to do a certain thing towards the forests.

Under the provisions of Article 4 paragraph (2) of Law Number 41 year 1999 concerning Forestry, forestry concession by the state shall authorize the Government to:

- a. regulate and administer all matters related to forests, forest areas and forest products;
- b. determine the status of a certain area as forest area or a forest area as non-forest area;
- c. regulate and stipulate legal relationships between persons and forests as well as to regulate legal actions concerning forestry.

The elaboration on the said authority is that the Government has authority to make forestry planning, management (forest management and preparation for management plan, forest utilization and use of forest area, forest reclamation and rehabilitation as well as natural protection and conservation), research and development, education and training, forestry extension and supervision.

Particularly, with respect to the authority as intended in Article 4 paragraph (2) sub-paragraph b of Law *a quo*, it creates authority for the Government to designate a certain area (non-forest area) as forest area and designate a forest area as non-forest area. Based on the Elucidation of Article 4 paragraph (2) sub-

paragraph b of Law *a quo*, referred to as certain area shall be non-forest area which may be in the form of forest or non-forest.

The above-mentioned provisions are intended to accommodate the dynamics of development, either outside the forestry sector or within the forestry sector itself (*an sich*). Since the development activities outside the forestry sector requires a permanent forest area, the Government will change the allocation and function from forest area to non-forest area to be subsequently utilized for non-forestry development activities, for instance for airport, seaport, toll road, dam/reservoir, plantation or agriculture.

On the other hand, it is possible for a certain area (non-forestry) to be designated as forest area, for instance by the provisions requiring the minimum area for forest area to be 30% in each province, so that certain areas need to be designated as forest areas. Forest utilization activities must be conducted within a forest area, so that if there is a certain area which is a non-forest area, in which forest utilization activities will be conducted, its status needs to be changed by designating the said certain area as forest area.

Further regulation on the designation of a certain area as forest area or a forest area as non-forest area is set forth in Government Regulation Number 44 year 2004 concerning Forestry Planning. The provisions of Article 18 paragraph (1) of the aforementioned Government Regulation specify that designation of forest areas shall partially cover provinces and certain regions. Designation of

forest area in a province is conducted by the Minister by observing the Provincial Spatial Layout Plan (RTRWP) and or the harmonization of the Forest Exploitation System (TGHK) with the RTRWP. Designation of a Provincial forest area conducted prior to the preparation of the RTRWP keeps referring to the previous designation of forest area. Review of a forest area along with its function in the RTRWP and the Regency/Municipal Spatial Plan (RTRW) must refer to the designation of provincial forest area.

At the same time, partial designation of a certain area as forest area pursuant to Article 18 paragraph (3) of Government Regulation *a quo* must meet the following requirements, namely the proposal or recommendation from the Governor and or Regent/Mayor, and the said area can be technically converted to a forest. Furthermore, in the Elucidation of such Article, it is stated that partial designation of a certain area shall be designation of a non-forest area as forest area. Based on such provisions, Decree of the Minister of Forestry Number 277/Menhut-II/2004 concerning Designation of Areas for Other Utilization in an area of ± 6,710 hectares located in Muara Jambi and East Jabung Regencies, Jambi Province as Forest Area with the Function as Permanent Production Forest was issued after the recommendation from the Governor of Jambi was obtained and the problems with the Petitioner were resolved pursuant to Deeds Number 22, Number 23, Number 24, Number 25, Number 26, Number 27, respectively dated October 11, 1999 concerning the agreement on transfer of

area/land from the Petitioner to PT. Wira Karya Sakti and the agreement on payment from PT. Wira Karya Sakti to the Petitioner.

After a forest area was designated, the area was subsequently converted to a part of the extended Industrial Forest area of PT. Wira Karya Sakti by virtue of Decree of the Minister of Forestry Number 246/Menhut-II/2004 concerning the Third Amendment to Decree of the Minister of Forestry Number 744/Kpts-II/1996 dated November 25, 1996 concerning the Granting of Industrial Forestry Concession on Forest Area in an area of \pm 78,240 hectares in Jambi Province to PT. Wira Karya Sakti. Based on such explanation, the designation of areas for other utilization as permanent forest areas with a function as Permanent Production Forest by the Government has been in accordance with the provisions of the applicable laws and regulations.

Based on the above-mentioned explanation, once again, the Government stipulates that the change of status of areas for other utilization argued to be the property of the Petitioner as forest areas has been in accordance with the applicable provisions and has been completed.

Furthermore, the Government is of the opinion that, with regard to the Petitioner's assumption stating that the provisions of Article 4 paragraph (2) subparagraph b and paragraph (3) of the Law *a quo*, which is considered not to take into account the rights to land which has been subject to land right under the

laws and regulations, to be managed by the state, the said assumption is improper and incorrect, with the following explanation:

1. Whereas the provisions of Article 4 paragraph (3) of Law *a quo* determine that forestry concession by the state shall keep taking into account the rights of customary law communities insofar as they are still in existence and their existence is acknowledged as well as shall be consistent with the national interest. In addition to the respect for the rights of customary law communities, in the forestry concession by the state, the Government also takes into account the existing rights to land. It is specified in the General Elucidation of the Law *a quo* stating that “in order to anticipate the development of the people’s aspiration, under this Law Indonesian forests are classified as state forests and private forests.

State forests are forests located on land which has not been subject to land right under Law Number 5 Year 1960 concerning Basic Regulations on Agrarian Principles, including forests previously managed by customary law communities referred to as customary forest, community forest or other appellations. The inclusion of forests managed by customary law communities in the definition of state forest is as a consequence of the existence of the right to manage and administer by the state as the organization of power of all people under the principle of the unitary state of the Republic of Indonesia. Accordingly, customary law

communities, insofar as they are still in existence and their existence is acknowledged, may manage the forests.

At the same time, private forests are forests located on land which has been subject to land right under Law Number 5 Year 1960 concerning Basic Regulations on Agrarian Principles, such as proprietary right, land use right and utilization right. With respect to this private forest, the Government does not have authority to manage as intended in Article 4 paragraph (2) of Law *a quo*.

Based on the aforementioned provisions, it is clear that in forestry concession by the state, Law *a quo* expressly sets forth the respect for the rights of customary law communities or the land rights to land possessed by the communities.

2. In addition, for the purpose of accommodating the land rights of the community within a certain area to be designated as forest area, pursuant to Article 20 paragraph (4) of Government Regulation Number 44 Year 2004 concerning Forestry Planning, it will be settled by the Committee for Forest Boundary Determination through the activity of boundary determination of the designated forest area. Furthermore, the aforementioned provisions of Article 22 paragraph (2) of Government Regulation specify that in the event that forest area boundary determination is a completed forest area boundary, but there are still third

party's rights remaining unsettled, such forest area will be designated by the Minister by including the rights containing therein to be settled by the relevant Committee for Forest Boundary Determination.

Based on the above description, forestry concession by the state, under the provisions of Article 4 paragraph (2) sub-paragraph b and paragraph (3) of the Law *a quo*, takes into account the existing rights of customary law communities or land rights pursuant to Law Number 5 Year 1960 concerning Basic Regulations on Agrarian Principles.

Accordingly, the Petitioner's argument stating that the provisions of Article 4 paragraph (2) sub-paragraph b and paragraph (3) of the Law *a quo* are considered to be inconsistent with the provisions of Article 28A, Article 28D paragraph (1), Article 28G paragraph (1) and Article 28H paragraph (4) of the 1945 Constitution is in fact not proved. Therefore, the abovementioned provisions petitioned for review do not impair the Petitioner's constitutional rights and/or authority.

With respect to the Petitioner's argument about the impairment suffered as a result of detention under the decision of general judicature, according to the Government, it is not the impairment of constitutional rights and/or authority as intended in Article 51 of Law Number 24 Year 2003 concerning the Constitutional Court. The impairment is concrete and factual in nature, therefore it is not the Constitutional Court's authority to

examine, to hear and to decide upon. Moreover, the detention of the Petitioner is not related to the coming into effect of Article 4 paragraph (2) sub-paragraph b and paragraph (3) of the Law *a quo*, but it is related to the criminal act committed by the Petitioner, namely intentionally encouraging other persons to damage the properties of other persons.

Under Decision of the Court, the Petitioner is legally and convincingly proved for committing such criminal act. Under Decision of District Court of Sengeti Number 183/Pid.B/2010/PN.Sgt, dated February 10, 2011 the injunction of which punished Mr. Maskur bin Kemas Anang (the Petitioner in this Petition for Review of Law) with 6 (six)-month imprisonment. Accordingly, the criminal conviction imposed on the Petitioner has no causal relationship (*causal verband*) by the coming into effect the provisions of Article 4 paragraph (2) sub-paragraph b and paragraph (3) of Law *a quo*.

IV. CONCLUSION

Based on the abovementioned explanation, the Government requested Your Excellency the Chief Justice/Panel of Justices of the Constitutional Court of the Republic of Indonesia examining, hearing and deciding upon the petition for review of provisions of Article 4 paragraph (2) sub-paragraph b and paragraph (3) of Law Number 41 Year 1999 concerning Forestry against the 1945 Constitution of the Republic of Indonesia to pass the following decisions:

1. To declare that the Petitioner does not have legal standing;
2. To reject the Petitioner's petition for review in its entirety or at least to declare that the Petitioner's petition for review is inadmissible (*niet onvankelijk verklaard*);
3. To accept the Statement of the Government in its entirety;
4. To declare that the provisions of Article 4 paragraph (2) sub-paragraph b and paragraph (3) of Law Number 41 Year 1999 concerning Forestry **is consistent with** the provisions of Article 28A, Article 28D paragraph (1), Article 28G paragraph (1) and Article 28H paragraph (4) of the 1945 Constitution of the State of the Republic of Indonesia.

[2.4] Considering whereas with respect to the Petitioner's petition, the People's Legislative Assembly presented a written statement which was submitted to the Registrar's Office of the Court on November 24, 2011 principally describing the following matters:

I. Legal Standing of the Petitioner

Pursuant to the provisions of Article 51 paragraph (1) of Law Number 24 Year 2003 concerning the Constitutional Court (hereinafter referred to as the Constitutional Court Law), it states that the Petitioner shall be the party who

considers that his/her constitutional rights and/or authority is impaired by the coming into effect of the Law, namely as follows:

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

The constitutional rights and/or authority as intended in the provisions of Article 51 paragraph (1) of the Constitutional Court Law are affirmed in the elucidation that “referred to as “constitutional rights” shall be the rights provided for by the 1945 Constitution of the State of the Republic of Indonesia.”

The provision of the Elucidation of Article 51 paragraph (1) of the Constitutional Court Law affirms that it shall only be the rights explicitly provided for in the 1945 Constitution of the State of the Republic of Indonesia which are categorized as “constitutional rights”. Therefore, pursuant to the Constitutional Court Law, in order for a person or party to be accepted as a Petitioner having legal standing in the petition for Review of Law against the 1945 Constitution, the following matters must first be explained and proved:

- a. the constitutional rights and/or authority as intended in “Article 51 paragraph (1) and the Elucidation of the Constitutional Court Law” which are considered to have been impaired by the coming into effect of the Law petitioned for review;
- b. the impairment of the Petitioner’s constitutional rights and/or authority caused by the coming into effect of the Law petitioned for review.

Whereas with regard to restrictions on constitutional impairment, the Constitutional Court gives definition and limitation on constitutional impairment caused by the coming into effect of a Law under Article 51 paragraph (1) of the Constitutional Court Law which must first meet 5 (five) requirements as restricted by Decision of the Constitutional Court (*vide* Case Decision Number 006/PUU-111/2005 and Case Decision Number 011/PUU-V/2007), namely as follows:

- a. the existence of constitutional rights and/or authority of the Petitioner granted by the 1945 Constitution;
- b. the Petitioner considers that his/her constitutional rights and/or authority have been impaired by a Law petitioned for review;
- c. the impairment of the constitutional rights and/or authority of the Petitioner must be specific and actual or at least potential in nature which, pursuant to logical reasoning, can be assured of occurring;

- d. there is a causal relationship (*causal verband*) between the impairment of constitutional rights and/or authority argued in the petition and the coming into effect of the Law petitioned for review;
- e. the possibility that with the granting of the petition, the argued impairment of the constitutional rights and/or authority will not or will no longer occur;

If the aforementioned five requirements fail to be met by the Petitioner in filing a petition for review of a Law against the 1945 Constitution, the Petitioner does not have legal standing as a Petitioner.

The People's Legislative Assembly is of the opinion that the Petitioner must first be able to substantiate whether it is true or not that the Petitioner is the party considering that his constitutional rights and/or authority are impaired by the coming into effect of the provisions petitioned for review, particularly in constructing the occurrence of impairment of his constitutional rights and/or authority caused by the coming into effect of the provisions petitioned for review, with the following explanation:

1. The Petitioner in the petition *a quo* did not specify his legal standing with regard to whether the impairment experienced by the Petitioner is in his capacity as a citizen (individual) or on behalf of a legal entity. The Petitioner solely described the impairment experienced by PT. Rickim Mas Jaya, PT. Rickimas Rizky Putra and PT Ricky Kurniawan Kertapersada and did not explain the Petitioner's capacity in the said companies.

2. Whereas due to the obscurity of the Petitioner's capacity, whether as an individual citizen or a representative of a legal entity/company, the qualification of the Petitioner is as the party having legal standing.

Based on the aforementioned argument, the People's Legislative Assembly is of the opinion that the Petitioner does not have legal standing as intended in the provisions of Article 51 paragraph (1) of the Constitutional Court Law and Case Decision Number 006/PUU-111/2005 as well as Case Decision Number 011/PUU-V/2007.

Nevertheless, the People's Legislative Assembly remained providing statements on judicial review of Article 4 paragraph (2) sub-paragraph b and paragraph (3) of Law Number 41 Year 1999 concerning Forestry, namely as follows:

II. Judicial Review of Article 4 paragraph (2) sub-paragraph b and paragraph (3) of Law Number 41 Year 1999 concerning Forestry

With regard to the Petitioner's petition as described in the petition *a quo*, the People's Legislative Assembly provided the following statements:

1. Forests are strategic assets and recourses which possess real benefits for ecological, socio-cultural and economic life. Therefore, forests must be managed, protected and utilized on a sustainable basis for the prosperity of the Indonesian people and nation;

2. Under Article 33 of the 1945 Constitution, land, water and the natural resources contained therein shall be managed by the state and shall be used for the greatest prosperity of the people. The phrase “managed” by the State contains the meaning of the management by the state to regulate (*regellendaad*), to administer (*bestuursdaad*), to manage (*beheersdaad*) and to supervise. Accordingly, the authority of the State over forests includes the above-mentioned four matters. Article 4 paragraph (2) sub-paragraph b of Law concerning Forestry sets forth that in the forestry concession the Government shall be authorized to determine the status of a certain area as forest area or a forest area as non-forest area. This provision is intended to delegate authority to the Government to determine the status of an area as forest area or non-forest area. The said delegation of authority is commonly practiced in the administration of state governance. Accordingly, the provisions on the government’s authority to determine the status of an area as forest area or non-forest area has constitutional basis.
3. A forest area is designated to preserve the existence of a forest as a permanent forest having the functions of conservation, protection or production. Based on the status, a forest area is classified into two types, namely a state forest area located on land which has not been subject to land right and a private forest area located on land which has been subject to land right such as proprietary right, land use right and utilization right.

- Designation of a private forest area acknowledges the existing right or does not remove the ownership from the land owner, yet restricting the utilization of the land or forest area. It is conducted in order to guarantee the existence of a forest in a sufficient area and with proportional spread, optimize the function of forest, improve the river basin carrying capacity, improve the ability to develop the community's capacity and capability on a participative basis, guarantee the equitable and sustainable distribution of benefits, in accordance with the objectives of forestry administration;
4. Based on the above description, the delegation of authority to the Government to designate a forest area or a non-forest area is aimed at ensuring the achievement of the objectives of forestry administration as the implementation form of the concept of the state's management of the natural resources used for the greatest prosperity of the people as set forth in Article 33 paragraph (3) of the 1945 Constitution;
 5. Whereas with respect to the Petitioner's argument stating that the Petitioner's constitutional rights have been impaired by the issuance of Decree of the Minister of Forestry Number 1198/MenhutIV/1997, the People's Legislative Assembly is of the opinion that the problem presented by the Petitioner are not the issue of constitutionality of norm of Article 4 paragraph (2) sub-paragraph b, but rather the issue of the applicability of norm;

6. Whereas in the petition *a quo*, the Petitioner wished for an addition of a phrase in Article 4 paragraph (3) thus stating “forestry concession by the state shall keep taking into account the right of customary law communities insofar as they are still in existence and their existence is acknowledged, the right on land which has been subject to right under a law, as well as shall be consistent with the national interest”. It constitutes a proposal for amendment to the norm of Article 4 paragraph (3) of the Forestry Law (*legislative review*). Accordingly, the People’s Legislative Assembly is of the opinion that the foregoing matter is not the authority of the Constitutional Court, but rather the authority of the People’s Legislative Assembly and the Government.

Based on the above-mentioned explanation, the People’s Legislative Assembly requested Your Excellency the Chief Justice/Panel of Justices of the Constitutional Court examining, hearing and deciding upon the petition for review of Law Number 41 Year 1999 concerning Forestry against the 1945 Constitution to pass the following decisions:

1. To declare that the Petitioner *a quo* does not have legal standing, so that the petition *a quo* must be declared inadmissible;
2. To declare that the petition *a quo* is rejected in its entirety or at least the petition *a quo* is inadmissible;

3. To declare that statement of the People's Legislative Assembly are admissible in its entirety;
4. To declare that Article 4 paragraph (2) sub-paragraph b and paragraph (3) of Law Number 41 Year 1999 concerning Forestry is consistent with the 1945 Constitution of the Republic of Indonesia;
5. To declare that Article 4 paragraph (2) sub-paragraph b and paragraph (3) of Law Number 41 Year 1999 concerning Forestry remain valid and binding as the applicable legal provisions.

[2.5] Considering whereas the Petitioner submitted conclusions received at the Registrar's Office of the Court on August 5, 2011 principally stating to remain firm his initial argument and opinion;

[2.6] Considering whereas to make the explanations in this decision brief, all matters occurred at the court hearing are referred to in the minutes of the court hearing which constitute an inseparable part of this decision;

3. LEGAL CONSIDERATION

[3.1] Considering whereas the purpose and objective of the Petitioner's petition are to review the constitutionality of Article 4 paragraph (2) sub-paragraph b and paragraph (3) of Law Number 41 Year 1999 concerning Forestry (State Gazette of the Republic of Indonesia Year 1999 Number 167, Supplement to the State Gazette of the Republic of Indonesia Number 3888, hereinafter referred to as the

Forestry Law) against Article 28A, Article 28D paragraph (1), Article 28G paragraph (1) and Article 28H paragraph (4) of the 1945 Constitution of the State of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution);

[3.2] Considering whereas before considering the substance of the petition, the Constitutional Court (hereinafter referred to as the Court) shall first consider:

- a. the Court's authority to hear the petition *a quo*;
- b. the legal standing of the Petitioner to file the petition *a quo*;

With regard to both matters, the Court is of the opinion as follows:

Authority of the Court

[3.3] Considering whereas according to Article 24C paragraph (1) of the 1945 Constitution, Article 10 paragraph (1) sub-paragraph a of Law Number 24 Year 2003 concerning the Constitutional Court as amended by Law Number 8 Year 2011 concerning the Amendment to Law Number 24 Year 2003 concerning the Constitutional Court (State Gazette of the Republic of Indonesia Year 2011 Number 70, Supplement to the State Gazette of the Republic of Indonesia Number 5226, hereinafter referred to as the Constitutional Court Law) as well as Article 29 paragraph (1) sub-paragraph a of Law Number 48 Year 2009 concerning Judicial Power (State Gazette of the Republic of Indonesia Year 2009 Number 157, Supplement to the State Gazette of the Republic of Indonesia Number 5076, hereinafter referred to as Law Number 48/2009), one of the

Court's authority is to hear at the first and final levels, the decision of which shall be final to review Law against the 1945 Constitution;

[3.4] Considering whereas the Petitioner's petition is to review the constitutionality of the norm of Law, namely Article 4 paragraph (2) subparagraph b and paragraph (3) of the Forestry against Article 28A, Article 28D paragraph (1), Article 28G paragraph (1) and Article 28H paragraph (4) of the 1945 Constitution constituting one of the authorities of the Court, therefore the Court is authorized to hear the petition *a quo*;

Legal Standing of the Petitioner

[3.5] Considering whereas based on Article 51 paragraph (1) of the Constitutional Court Law and the Elucidation thereof, the parties who may file a petition for review of Law against the 1945 Constitution shall be those who consider that their constitutional rights and/or authority granted by the 1945 Constitution are impaired by the coming into effect of a Law, namely:

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

- d. state institutions;

Hence, in the review of a Law against the 1945 Constitution, the Petitioner must first explain and prove the following:

- a. his/her qualification as Petitioner as intended in Article 51 paragraph (1) of the Constitutional Court Law;
- b. the impairment of constitutional right and/or authority granted by the 1945 Constitution caused by the coming into effect of the law being petitioned for review;

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

- a. the existence of constitutional rights and/or authority of the Petitioner granted by the 1945 Constitution;
- b. the Petitioner considers that the constitutional rights and/or authority have been impaired by the coming into effect of the Law petitioned for review;

- c the impairment of the constitutional rights and/or authority must be specific and actual or at least potential in nature which, pursuant to logical reasoning, can be assured of occurring;
- d. there is a causal relationship (*causal verband*) between the intended impairment of constitutional rights and/or authority and the Law petitioned for review;
- e. the possibility that with the granting of the Petitioner's petition, the argued impairment of the constitutional rights and/or authority will not or will no longer occur;

[3.7] Considering whereas based on the description as mentioned in paragraphs **[3.5]** and **[3.6]** above, the Court shall consider the legal standing of the Petitioner in the petition *a quo* as follows:

[3.7.1]Whereas the Petitioner is the party who considers and even more, believes that his constitutional rights and/or authority under Article 28A, Article 28D paragraph (1), Article 28G paragraph (1) and Article 28H paragraph (4) of the 1945 Constitution have been impaired by provisions of Article 4 paragraph (2) sub-paragraph b and paragraph (3) of the Forestry Law which gives freedom to the Ministry of Forestry to determine the status of a certain area as forest area or a forest area as non-forest area, regardless of the land right granted by the state.

[3.7.2] Whereas the Petitioner's plantation land which is located in agricultural farming area has been converted to and designated as Industrial Forest reserves by the Minister of Forestry;

[3.8] Considering whereas based on Article 51 paragraph (1) of the Constitutional Court Law and in relation to the previous decisions, as well as the constitutional impairment argued by the Petitioner, according to the Court, the constitutional rights of the Petitioner as an individual Indonesian citizen owning a plantation land converted to and designated as Industrial Forest reserves (*vide* exhibit P-2 through exhibit P-9) have been impaired by the coming into effect of the Law petitioned for review. The said impairment is actual and specific in nature, and there is a causal relationship (*causal verband*) between the intended impairment and the Law petitioned for review. Accordingly, the Petitioner has legal standing to file the petition *a quo*;

[3.9] Considering whereas since the Court is authorized to hear the petition *a quo* and the Petitioner has legal standing, subsequently the Court shall consider the substance of the petition;

Substance of the Petition

[3.10] Considering whereas the Petitioner's substance of the petition is judicial review of Article 4 paragraph (2) sub-paragraph b and paragraph (3) of the Forestry Law which reads as follows:

Article 4 paragraph (2) sub-paragraph b:

“Forestry concession by the State as intended in paragraph (1) shall authorize the Government to:

...

- b. determine the status of a certain area as forest area or a forest area as non-forest area”.*

Article 4 paragraph (3):

“Forestry concession by the State shall keep taking into account the right of customary law communities insofar as they are still in existence and their existence is acknowledged, as well as shall be consistent with the national interest”.

with regard to Article 28A, Article 28D paragraph (1), Article 28G paragraph (1) and Article 28H paragraph (4) of the 1945 Constitution:

- **Article 28A:** *“Every person shall have the right to live and to defend his/her life and living.”*
- **Article 28D paragraph (1):** *“Every person shall have the right to the recognition, the guarantee, the protection and the legal certainty of just laws as well as equal treatment before the law.”*

- **Article 28G paragraph (1):** *“Every person shall have the right to protect him/herself, his/her family, honor, dignity and property under his/her control, and shall have the right to feel secure and be protected from the threat of fear to do, or not to do something which constitutes human rights.”*
- **Article 28H paragraph (4):** *“Every person shall have the right to possess personal proprietary rights and such proprietary rights shall not be taken over arbitrarily by anybody.”*

[3.11] Considering whereas in order to substantiate his arguments, the Petitioner presented means of evidence in the form of letters and articles marked as exhibits P-1 through P-41;

[3.12] Considering whereas with regard to the Petitioner’s petition, the Government provided oral statements at the court hearing on July 26, 2011 and written statements which were received at the Registrar’s Office of the Court on July 28, 2011 principally describing the following matters:

- The provisions of Article 4 paragraph (2) sub-paragraph b of the Forestry Law are intended to accommodate the dynamics of development, either outside the forestry sector or within the forestry sector itself (*an sich*). Since the development activities outside forestry sector requires a permanent forest area, the Government will change the allocation and function from forest area to non-forest area, to be subsequently utilized for

- non-forestry development activities, for instance for airport, seaport, toll road, dam/reservoir, plantation or agriculture;
- On the other hand, it is possible for a certain area (non-forestry) to be designated as forest area, for instance by the provisions requiring the minimum area for forest area to be 30% in each province, so that certain areas need to be designated as forest areas. Forest utilization activities must be conducted within a forest area, so that if there is a certain area which constitutes a non-forest area, in which forest utilization activities will be conducted, its status needs to be changed by designating the said certain area as forest area;
 - Whereas the provisions of Article 4 paragraph (3) of the Forestry Law specify that forestry concession by the state shall keep taking into account the right of customary law communities insofar as they are still in existence and their existence is acknowledged as well as shall be consistent with the national interest. In addition to the respect for the rights of customary law communities, in the forestry concession by the state, the Government also takes into account the existing land rights;
 - The General Elucidation of the Forestry Law states that “in order to anticipate the development of people’s aspiration, under this Law Indonesian forests are classified as state forests and private forests. **State forests** are forests located on land which has not been subject to land

right pursuant to Law Number 5 Year 1960 concerning Basic Regulations on Agrarian Principles, including forests previously managed by customary law communities referred to as customary forests, community forests or other appellations. The inclusion of forests managed by customary law communities in the definition of state forest is as a consequence of the existence of the right to manage and administer by the state as the organization of power of all people under the principle of the Unitary State of the Republic of Indonesia. Accordingly, customary law communities, insofar as they are still in existence and their existence is acknowledged, may manage forests. Private forests are forests located on land which has been subject to land rights under Law Number 5 Year 1960 concerning Basic Regulations on Agrarian Principles, such as proprietary right, land use right and utilization right. With regard to this private forest, the Government does not have concession authority as intended in Article 4 paragraph (2) of the Forestry Law. Based on the aforementioned provisions, it is clear that in forestry concession by the state, the Forestry Law expressly sets forth the respect for the rights of customary law community or the land rights possessed by the community.

[3.13] Considering whereas with respect to the Petitioner's petition, the People's Legislative Assembly submitted written statements which were received at the Registrar's Office of the Court on November 24, 2011 principally describing the following matters:

- Under Article 33 of the 1945 Constitution, land, water and the natural resources contained therein shall be managed by the state and shall be used for the greatest prosperity of the people. The phrase “managed” by the state contains the meaning of the management by the state to regulate (*regelendaad*), to administer (*bestuursdaad*), to manage (*beheersdaad*) and to supervise. Accordingly, the authority of the state over forests includes the abovementioned four matters. Article 4 paragraph (2) subparagraph b of the Forestry Law sets forth that in the forestry concession the Government shall be authorized to determine the status of a certain area as forest area or a forest area as non-forest area. This provision is intended to delegate authority to the Government to determine the status of an area as forest area or non-forest area. The said delegation of authority is commonly practiced in the administration of state governance. Accordingly, the provisions on the Government’s authority to determine the status of an area as forest area or non-forest area has constitutional basis;
- A forest area is designated to preserve the existence of a forest as a permanent forest having the functions of conservation, protection or production. Based on the status, a forest area is classified into two types, namely a state forest area located on land which has not been subject to land right and a private forest area located on land which has been subject to land right, such as proprietary right, land use right and utilization right.

Designation of a private forest area acknowledges the existing right or does not remove the ownership from the land owner, yet restricting the utilization of the land or forest area. It is conducted in order to guarantee the existence of a forest in a sufficient area and with proportional spread, optimize the function of forest, improve the river basin carrying capacity, improve the ability to develop the community's capacity and capability on a participative basis, to guarantee the equitable and sustainable distribution of benefits, in accordance with the objectives of forestry administration;

[3.14] Considering whereas the Petitioner submitted conclusions received at the Registrar's Office of the Court on August 5, 2011, further set out in the Facts of the Case section, principally stating to remain firm with the previous opinion, at the same time the Government and the People's Legislative Assembly did not give any conclusions;

Opinion of the Court

[3.15] Considering whereas based on the arguments of the Petitioner's petition, evidence presented by the Petitioner, oral and written statements of the Government, written statements of the People's Legislative Assembly, written conclusions of the Petitioner as well as the facts revealed at the court hearing, before specifically stating his opinion with regard to the Petitioner's arguments, it is deemed necessary by the Court to consider the following matters:

1. Law Number 41 Year 1999 concerning Forestry was amended by Law Number 19 Year 2004 concerning the Stipulation of the Government Regulation in Lieu of Law Number 1 Year 2004 concerning the Amendment to Law Number 41 Year 1999 concerning Forestry to Become Law (State Gazette of the Republic of Indonesia Year 2004 Number 86, Supplement to the State Gazette of the Republic of Indonesia Number 4412). Nevertheless, with regard to the articles petitioned for review by the Petitioner, namely Article 4 paragraph (2) sub-paragraph b and paragraph (3) of the Forestry Law is not amended;
2. According to Article 1 of the Forestry Law, forests shall be a unit of ecosystem in the form of land containing biological natural resources which are dominated by trees within the natural group of its environment, which are inseparable from one another.
3. Whereas the Court, in its Decision Number 001-021-/PUU-I/2003 dated December 15, 2004, considered that the meaning of Article 33 paragraph (3) of the 1945 Constitution shall be as follows:

“.....the phrase “managed by the state” must be construed as to include the meaning of the management by the state in a broad sense sourced from and derived from the conception of the sovereignty of Indonesian people over all resources of “land and water and the natural resources contained therein”, also including the meaning of collective public

ownership by the people of the said resources. The aforementioned collective ownership by the people is constructed by the 1945 Constitution to give mandate to the state to formulate policy (beleid), to administer (bestuursdaad), to regulate (regelendaad), to manage (beheersdaad) and to supervise (toezichhoudensdaad) for the greatest prosperity of the people. The function of administration (bestuursdaad) by the state is performed by the government by using its authority to issue and revoke permission (vergunning), license (licentie) and concession (concessie) facilities. The function of regulation by the state (regelendaad) is performed through legislative authority by the People's Legislative Assembly and the Government, as well as regulation by the Government (executive). The function of management (beheersdaad) is performed through the mechanism of shareholding and/or through direct involvement in the management of State-Owned Enterprises or State-Owned Legal Entities as institutional instruments through which the state c.q. the Government manage such resources to be used for the greatest prosperity of the people. Likewise, the function of supervision by the state (toezichhoudensdaad) is performed by the state c.q. the Government for the purpose of supervising and controlling so that the implementation of management by the state of the production branches which are important and which affect the livelihood of the public is completely performed for the greatest prosperity of all the people".

4. Forestry concession by the state, according to the Forestry Law, grants authority to the government to regulate and administer all matters related to forests, forest areas and forest products; designates forest areas and or changes the status of forest areas; regulates and stipulates legal relationship between persons and forests or forest areas and forest products as well as regulates forestry legal actions. It is due to the requirement that forests must be administered and managed, protected and utilized on a sustainable basis for the prosperity of Indonesian people, both present and future generations (*vide* General Elucidation of the Forestry Law);
5. With regard to various governmental actions in making regulation on designation of the status of a certain area as forest area, the aforementioned designation must always be conducted under the laws for the purpose of enforcing the principles of democratic constitutional state;
6. Whereas the Court, in Decision Number 45/PUU-IX/2011 dated February 21, 2012 provided considerations, among other things, as follows:

“Whereas in a constitutional state, a state administration official may not act at will, however, he/she must acts in accordance with law, laws and regulations as well as freies Ermessen (discretionary powers). Sole designation of an area as forest area without any processes or stages involving various stakeholders within the forest area in accordance with

law as well as laws and regulations constitutes the implementation of authoritarian government. Designation of forest area is predictable, gradual, even more must be planned, and therefore action based on freies Ermessen (discretionary powers) is not required. A forest area, the existence of which is to be preserved as permanent forest, which affects the livelihood of the public, should not be merely determined through designation.”

7. Whereas the Court, in Decision Number 32/PUU-VIII/2010, dated June 4, 2012, provided the following considerations:

“...the use of phrase of “by taking into account” in Article 10 paragraph b of Law 4/2009 actually has imperative meaning asserting that the Government, when determining a Mining Area (WP), is required to first include the community’s opinion as a form of the function of control over the Government in order to ensure the fulfillment of the citizens’ constitutional rights to live a physically and mentally prosperous life, to have residence, and to obtain a proper and healthy living environment, to possess personal proprietary rights and such proprietary rights shall not be taken over arbitrarily by anybody [vide Article 28H paragraphs (1) and (4) of the 1945 Constitution]. Accordingly, in order to strengthen the function of control of the community over the Government and also to guarantee the certainty of just laws either for the community in general or for the community specifically within the Mining Area (WP) and the

affected community, including mining business actors, as well as to achieve the mandate of the 1945 Constitution. According to the Court, the aforementioned function of control would not be sufficiently performed only through a consultation forum with the People's Legislative Assembly of the Republic of Indonesia, but it must also be strengthened through the function of control directly performed by the community, particularly the community whose area or land is to be included in a Mining Area (WP) and the community to be affected...”;

[3.16] Considering whereas after considering the matters as described in point 1 through point 7 above, subsequently, with regard to the Petitioner's arguments, the Court is of the opinion as follows:

[3.16.1] Whereas with respect to the Petitioner's arguments, Article 4 paragraph (2) sub-paragraph b of the Forestry Law is inconsistent with Article 28A, Article 28D paragraph (1), Article 28G paragraph (1) and Article 28H paragraph (4) of the 1945 Constitution. According to the Court, the government authority to determine the status of a certain area as forest area or a forest area as non-forest area as set forth in the aforementioned Article 4 paragraph (2) sub-paragraph b is one of the management forms by the state of land and water which is allowed under the constitution provided that the designation of an area must be based on the applicable legal provisions by first taking into account the existing rights of the community within the area. In this case, if there are rights of the community within the area, including the rights of traditional community,

proprietary rights or other rights, the government is required to first conduct fair settlement with the holders of the rights. The Court did not find any inconsistency between the norm of Article 4 paragraph (2) sub-paragraph b of the Forestry Law and Article 28A, Article 28D paragraph (1), Article 28G paragraph (1) and Article 28H paragraph (4) of the 1945 Constitution;

[3.16.2] Whereas the Petitioner argues that the provisions of Article 4 paragraph (3) of the Forestry Law only take into account the rights of customary law community, while they should also take into account the land rights possessed by the community, so that they are inconsistent with Article 28A, Article 28D paragraph (1), Article 28G paragraph (1) and Article 28H paragraph (4) of the 1945 Constitution. Accordingly, the Petitioner requested that Article 4 paragraph (3) of the Forestry Law to read as follows: *“Forestry concession by the State shall keep taking into account the right of customary law communities insofar as they are still in existence and their existence is acknowledged, **the right on land which has been subject to land right under law**, as well as shall be consistent with the national interest”*. The Petitioner’s reason is that the absence of the acknowledgement of the right on land which has been subject to land right under Law impairs the Petitioner. Other than the concrete case encountered by the Petitioner as described in his petition, the Court may justify the substance of the aforementioned arguments of the Petitioner’s petition. According to the Court, in a certain area there may be rights adhered to land, such as proprietary rights, building use rights, land use rights and other rights of land. The said rights must

obtain constitutional protection under Article 28G paragraph (1) and Article 28H paragraph (4) of the 1945 Constitution. Therefore, forestry concession by the state must also take into account the said rights, in addition to the rights of the customary law community included in the norm *a quo*;

Based on the aforementioned consideration, according to the Court, Article 4 paragraph (3) of the Forestry Law does not include the norm concerning other land rights granted under the provisions of laws and regulations, so that the article is inconsistent with the 1945 Constitution due to the exclusion of land rights granted under the provisions of laws and regulations. Although the Court is not authorized to change the sentence in a Law, since such authority is held by legislators, namely the People's Legislative Assembly and the President, the Court may however determine that a norm is conditionally constitutional;

Whereas in line with the intention of Decision of the Court Number 32/PUU-VIII/2010 dated June 4, 2012 , the word "*taking into account*" in Article 4 paragraph (3) of the Forestry Law must also have imperative meaning in the form of assertion that the Government, when determining a forest area, is required to first include the community's opinion as a form of the function of control over the Government to ensure the fulfillment of citizens' constitutional rights to live a physically and mentally prosperous life, to have residence, and to obtain a proper and healthy living environment, to possess personal proprietary rights and the said proprietary rights shall not be taken over arbitrarily by anybody [*vide* Article 28H paragraphs (1) and (4) of the 1945 Constitution]. Accordingly, Article 4

paragraph (3) of the Forestry Law is inconsistent with the 1945 Constitution insofar as it is not construed as follows: “*Forestry concession by the State shall be required to keep protecting, respecting and fulfilling the rights of customary law communities insofar as they are still in existence and their existence is acknowledged, the right of the community granted under the provisions of laws and regulations, as well as shall be consistent with the national interest.*”

[3.17] Considering whereas based on the above-mentioned considerations, the Petitioner’s arguments are legally founded in part;

4. CONCLUSIONS

Based on the aforementioned considerations of facts and laws, the Court has come to the following conclusions:

[4.1] The Court has authority to hear the petition *a quo*;

[4.2] The Petitioner has legal standing to file the petition *a quo*;

[4.3] The Petitioner's arguments are legally founded in part;

Based on the Constitution of the State of the Republic of Indonesia Year 1945, Law Number 24 Year 2003 concerning the Constitutional Court as amended by Law Number 8 Year 2011 concerning the Amendment to Law Number 24 Year 2003 concerning the Constitutional Court (State Gazette of the Republic of Indonesia Year 2011 Number 70, Supplement to the State Gazette of

the Republic of Indonesia Number 5226), as well as Law Number 48 Year 2009 concerning Judicial Power (State Gazette of the Republic of Indonesia Year 2009 Number 157, Supplement to the State Gazette of the Republic of Indonesia Number 5076);

5. INJUNCTION OF DECISION

Passing the Decision,

Declaring:

- To grant the Petitioner's petition in part;
- Article 4 paragraph (3) of Law Number 41 Year 1999 concerning Forestry (State Gazette of the Republic of Indonesia Year 1999 Number 167, Supplement to the State Gazette of the Republic of Indonesia Number 3888) is inconsistent with the 1945 Constitution of the State of the Republic of Indonesia insofar as it is not construed as follows: "*Forestry concession by the State shall be required to keep protecting, respecting and fulfilling the rights of customary law communities insofar as they are still in existence and their existence is acknowledged, the right of the community granted under the provisions of laws and regulations, as well as shall be consistent with the national interest*";
- Article 4 paragraph (3) of Law Number 41 Year 1999 concerning Forestry (State Gazette of the Republic of Indonesia Year 1999 Number 167,

Supplement to the State Gazette of the Republic of Indonesia Number 3888) does not have binding legal force insofar as it is not construed as follows: *“Forestry concession by the State shall be required to keep protecting, respecting and fulfilling the rights of customary law communities insofar as they are still in existence and their existence is acknowledged, the right of the community granted under the provisions of laws and regulations, as well as shall be consistent with the national interest”*;

- To order the publication of this decision properly in the Official Gazette of the Republic of Indonesia;
- To reject the other and the remaining parts of the Petitioner’s petition.

In witness whereof, this decision was made in the Consultative Meeting of Justices by nine Justices of the Constitutional Court, namely Moh. Mahfud MD., as the Chairperson and concurrent Member, Achmad Sodiki, Anwar Usman, Harjono, Muhammad Alim, Ahmad Fadlil Sumadi, Hamdan Zoelva, Maria Farida Indrati, and M. Akil Mochtar, respectively as Members, on **Monday, the ninth of July two thousand and twelve**, and was pronounced in the plenary session of the Constitutional Court open for the public on **Monday, the sixteenth of July two thousand and twelve** by seven Justices of the Constitutional Court, namely Moh. Mahfud MD., as the Chairperson and concurrent Member, Achmad Sodiki, Anwar Usman, Ahmad Fadlil Sumadi, Hamdan Zoelva, Maria Farida Indrati and

M. Akil Mochtar, respectively as Members, assisted by Luthfi Widagdo Eddyono as Substitute Registrar, as well as in the presence of the Petitioner or his attorney, the Government or its representative and the People's Legislative Assembly or its representative.

CHIEF JUSTICE,

sgd.

Moh. Mahfud MD.

MEMBERS,

sgd.

Achmad Sodiki

sgd.

Anwar Usman

sgd.

Ahmad Fadlil Sumadi

sgd.

Hamdan Zoelva

sgd.

Maria Farida Indrati

sgd.

M. Akil Mochtar

SUBSTITUTE REGISTRAR,

sgd.

Luthfi Widagdo Eddyono