



**DECISION
Number 64/PUU-IX/2011**

FOR THE SAKE OF JUSTICE UNDER THE ONE ALMIGHTY GOD

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA

[1.1] Examining, hearing and deciding upon constitutional cases at the first and final levels, has passed a decision in the case of petition for Review of Law Number 6 Year 2011 concerning Immigration against the 1945 Constitution of the State of the Republic of Indonesia, filed by:

[1.2] Name : **Prof. Dr. Yusril Ihza Mahendra**
Occupation : Lecturer
Address : Jalan Karang Asem Utara Number 32, Kuningan Timur Sub-District, Setiabudi District, South Jakarta

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

[1.3] Having read the petition of the Petitioner;

Having heard the statements of the Petitioner;

Having examined the documentary evidence presented by the Petitioner;

Having heard the statements of the expert and witnesses of the Petitioner;

Having heard and read the written statements of the Government;

Having heard and read the written statements of the People's Legislative Assembly;

Having read the written conclusion of the Petitioner and the Government;

2. THE FACTS OF THE CASE

[2.1] Considering whereas the Petitioner has filed a petition dated September 9, 2011, which was received and registered at the Registrar's Office of the Constitutional Court (hereinafter referred to as the Registrar's Office of the Court) on Thursday, September 15, 2011, based on Certificate of Receipt of Petition File Number 323/PAN.MK/2011 and recorded in the Registry of Constitutional Cases under Number 64/PUU-IX/2011 on Tuesday, September 20, 2011, and which has been revised by petition dated September 9, 2011 and received at the Registrar's Office of the Court on October 5, 2011, and which essentially states the following matters:

I. The Constitutional Court Has the Authority to Examine, Hear, and Decide Upon This Case

1. Whereas the Petitioner filed a petition to the Constitutional Court to conduct a judicial review of Article 97 paragraph (1) of Law Number

6 Year 2011 concerning Immigration (hereinafter referred to as Law 6/2011) related to the authority of several state administrators to ban a person and to extend such ban, based on specific reasons, from travelling abroad or “leaving the territory of the unitary state of the Republic of Indonesia”, which in full reads: “The ban shall be applicable for a maximum period of 6 (six) months and may be extended at any time for a maximum period of 6 (six) months” against Article 1 paragraph (3), Article 28D paragraph (1), and Article 28E paragraph (1) of the 1945 Constitution. Therefore, this petition is included in the category of “review of Law”;

2. Whereas the provision of Article 24C paragraph (1) of the 1945 Constitution states that the Constitutional Court shall have the authority to hear cases at the first and final levels the decision of which shall be final, in order to review Laws against the 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 Amendment to Law Number 24 Year 2003 concerning the Constitutional Court (hereinafter referred to as the Constitutional Court Law) confirms the same, namely stating that the Constitutional Court shall have the authority to hear cases at the first and final levels, the decision of which shall be final, among other things, in order to “review Laws

against the 1945 Constitution of the State of the Republic of Indonesia”. A similar confirmation is also suggested by Law Number 48 Year 2009 concerning General Judicature which states that: “the Constitutional Court shall have the authority to hear cases at the first and final levels, the decision of which shall be final, among other things, in order “to review Laws against the 1945 Constitution of the State of the Republic of Indonesia””. Meanwhile, the provision of Article 9 paragraph (1) of Law Number 12 Year 2011 concerning the Formation of Laws and Regulations states that: “In the event that a Law is alleged to be inconsistent with the 1945 Constitution of the State of the Republic of Indonesia, the review shall be conducted by the Constitutional Court”;

3. Based on the description in points 1 to 4 above, the Petitioner is truly convinced, that the Constitutional Court has the authority to hear the petition for Judicial Review at the first and final levels, the decision of which shall be final.

II. The Petitioner Has Legal Standing for Filing This Petition

1. Whereas Article 51 paragraph (1) of the Constitutional Court Law states that petitioner of Judicial Review of Law shall be “a party considering that his/her constitutional rights and/or authority are impaired by the coming into effect of a Law”, the sub-paragraph a

of which indicates “individual Indonesian citizens”. Furthermore, Elucidation of Article 51 paragraph (1) of the Law *a quo* states that referred to as “constitutional right” shall be “right set forth in the 1945 Constitution of the State of the Republic of Indonesia”;

2. Whereas the Constitutional Court’s permanent Jurisprudence as set forth in Decision Number 006/PUU-III/2005 *juncto* Decision Number 11/PUU-V/2007 and subsequent decisions has provided a cumulative understanding and definition of what is referred to as “impairment of constitutional rights and/or authority” with the coming into effect of a norm of Law, namely: (1) The existence of constitutional right of the Petitioner granted by the 1945 Constitution of the State of the Republic of Indonesia; (2) Whereas the aforementioned constitutional right is considered by the Petitioner as having been impaired by the Law being petitioned for review; (3) Such impairment of the Petitioner’s constitutional rights and/or authority is specific (special) and actual, or at least potential in nature which, pursuant to logical reasoning, can be assured of occurring; (4) The causal relationship (*causal verband*) between the impairment and the coming into effect of the Law being petitioned for review; and (5) The possibility that with the granting of the petition, the argued impairment of such constitutional rights and/or authority will not or will no longer occur;

3. Whereas as an Indonesian citizen, the Petitioner has constitutional rights granted by the 1945 Constitution, both indirect rights such as the right not to be treated arbitrarily as a consequence of the statement that the state of Indonesia is a “constitutional state” as in the norm set forth in Article 1 paragraph (3) of the 1945 Constitution, as well as direct constitutional rights, the norm of which is formulated in Chapter XA titled “HUMAN RIGHTS”, and specifically formulated in Article 28D paragraph (1) of the 1945 Constitution which reads: “Every person shall have the right to the recognition, guarantee, protection and legal certainty of just laws as well as equal treatment before the law” and Article 28E paragraph (1), particularly the phrase which reads: “every person is free ... to choose his residency in the territory of the country that he shall be able to leave and to which he shall have the right to return”.
4. Whereas the Petitioner considers, with the coming into effect of norm in Chapter IX Article 97 paragraph (1) of Law 6/2011 which reads: “The ban shall be applicable for a maximum period of 6 (six) months and may be extended at any time for a maximum period of 6 (six) months”, the Petitioner’s constitutional rights have been impaired, particularly by the phrase which states “and may be extended at any time for a maximum period of 6 (six) months” as

shall be described in more details in the subsequent description in number II below. This norm is related to the previous provisions set forth in Chapter IX of Law Number 6 Year 2011 which particularly regulate "Travel Ban", which grant the authority to several state administrators, such as, among others, the Attorney General, to ban a person from leaving the territory of the unitary state of Indonesia based on a specific reason. Such specific reason, in relation to Article 35 sub-article f of Law Number 16 Year 2004 concerning Attorney General, is due to "a person's involvement in a criminal case";

5. Whereas at the time of the submission of this petition, the Petitioner is an Indonesian citizen which was banned from leaving the territory of the unitary state of the Republic of Indonesia for a period of 6 (six) months based on the Decision of the Attorney General of the Republic of Indonesia Number Kep 201/D/Dsp/3/06/2011 dated June 27, 2011 concerning "Travel Ban in Criminal Case" (*vide* Exhibit P-4). Meanwhile, the main reason of the ban on the Petitioner, as set forth in the consideration of the aforementioned Decision, is "for the purpose of legal operations in the context of investigation", since the Petitioner is allegedly involved in a criminal case and has been declared as a Suspect since June 24, 2010 (*vide* Exhibit P-5). In the consideration of his Decision, the Attorney

General has used Law 6/2011, one of the articles of which the Petitioner considers as having impaired the Petitioner's constitutional rights, and currently is being petitioned for review by the Constitutional Court;

6. Whereas before the issuance of Decision of the Attorney General Number Kep-201/D/ Dsp.3/06/2011 dated June 27, 2011 as intended in point 2, the Attorney General had previously also issued Decision Number Kep-212/D/Dsp.3/06/2010 dated June 25, 2010 concerning "Travel Ban in Criminal Case", the dictum of which banned the Petitioner from leaving the territory of the unitary state of the Republic of Indonesia for 1 (one) year for the same reason, namely for "the purpose of legal operations in the context of investigation". The ban was applicable as from June 25, 2010 until June 25, 2011 (*vide* Exhibit P-6). This decision was based, among other things, on Law Number 9 Year 1992 concerning Immigration which was still applicable at that time. Before the end of the travel ban period, the Attorney General once again imposed a ban on the Petitioner from leaving the territory of the state of Indonesia under Decision Number Kep-195/D/Dsp.3/06/2011 dated June 24, 2011 concerning "Travel Ban in Criminal Case" for another period of (1) year until June 25, 2012 (*vide* Exhibit P-7). The reason used was still the same, namely "for the purpose of legal operations in the

context of investigation”. While in fact, one of the legal foundations used to impose travel ban was Law Number 9 Year 1992, which has in fact been revoked and declared null and void based on Article 142 of Law 6/2011 since May 5, 2011;

7. Whereas the Petitioner subsequently contested the aforementioned Decision of the Attorney General Number Kep-195/D/Dsp.3/06/2011 dated June 24, 2011, by filing a suit to the Jakarta State Administrative Court. The Deputy Attorney General Darmono initially insisted to declare the aforementioned decision issued by the Attorney General, using the Law which has been revoked and declared null and void, as “a valid and correct decision” (*vide* Exhibit P-8). The aforementioned Decision of the Attorney General subsequently caused a polemic between the Petitioner and the Corps of the Attorney General’s Office, the Minister of Law and Human Rights Patrialis Akbar and several officers of the Directorate General of Immigration of the Ministry of Law and Human Rights (*vide* Exhibit P-9). However, after the lawsuit had been filed in the Jakarta State Administrative Court, the Attorney General suddenly revoked Decision Number Kep-195/D/Dsp.3/06/2011 dated June 24, 2011 and issued a new Decision on Travel Ban, namely Decision Number Kep-201/D/Dsp.3/06/2011 dated June 27, 2011. The dictum of the

aforementioned Decision is substantially banning the Petitioner from leaving the territory of the unitary state of the Republic of Indonesia for a period of 6 (six) months, in accordance with the maximum period provided by Article 97 paragraph (1) of Law 6/2011, which was used as one of the legal basis in the consideration part of the aforementioned decision. Meanwhile, the reason for travel ban is still the same, namely “for the purpose of legal operations in the context of investigation”;

8. Whereas the Attorney General’s reason to extend travel ban against the Petitioner due to “legal operations in the context of investigation”, is considered by the Petitioner as a reason which is made up and should be presumed as an intentional and arbitrary action containing political motive to deny the Petitioner’s constitutional rights who is entitled and free to leave the territory of the unitary state of the Republic of Indonesia, and return at any time the Petitioner wishes. Investigation on the Petitioner has been intensively conducted by Investigators of the Attorney General’s Office since June 24, 2010, and case file on the Petitioner has been declared complete or P-21 on January 21, 2011. The declaration that the case file has been completed and that there would be no more investigation on the Petitioner has been stated repeatedly, up to ten times both by the high officers of the Attorney General’s

Office, the Deputy Attorney General for Special Crime Muhammad Amari who currently has been dismissed, the current Deputy Attorney General for Special Crime Andi Nerwanto, and the Director of Prosecution at the Office of Deputy Attorney General for Special Crime Arnold Angkouw, as well as directly stated by the Attorney General Basrie Arief himself to the public (*vide* Exhibit P-10);

9. Whereas according to the Attorney General Basrie Arief (*vide* Exhibit P-11), although the status of the investigation on the Petitioner has been declared complete (*vide* Exhibit P-21), until now it has not been accompanied by Phase II Transfer, namely transfer of case files and the suspect, namely the Petitioner, from the Director of Investigation to the Director of Prosecution. However, the Attorney General Basrie Arief has repeatedly stated to the public that there would be no more investigation on the Petitioner, since the completion of investigation in December 2010. The aforementioned Phase II Transfer was delayed because the Attorney General's Office was suddenly "surprised" by the issuance of the Supreme Court's cassation decision, which acquitted Professor Romli Atmasasmita of all charges (*ontslag van alle rechtsvervolging*) on the accusation of corruption. Professor Romli was the Director General of General Legal Administration when the

Petitioner held the position of Minister of Law and Human Rights. While the Petitioner was alleged by the Attorney General's Office to "participate" in conducting corruption in collaboration with Professor Romli, so that the Petitioner was charged with Article 55 paragraph (1) one of Criminal Code. The Supreme Court's cassation decision made the Attorney General's Office confused, whether to continue the accusation on the Petitioner or to stop it. Because, if Professor Romli as the main actor (*dader*) of the corruption – while the Petitioner "participated" (*medepleger*) in the sense of giving an opportunity and/or letting the Petitioner's subordinate to conduct corruption – was in fact acquitted of all charges by the Supreme Court, then what kind of opportunity and/or permission did the Petitioner give to Professor Romli? The aforementioned Professor Romli's cassation case was decided by the Supreme Court on December 22, 2010. But until this petition was filed, which was already more than 9 (nine) months after the decision date, the Attorney General has never completed the study on the aforementioned cassation decision (*vide* Exhibit P-12). The Petitioner's status as a Suspect is left uncertain so long without any clarity, while the Attorney General's Office, since October 2008, has been shouting about to the public that the Petitioner was strongly alleged "to be involved in the Legal Entity Administration System

(*Sisminbakum*) Corruption Case” which caused financial loss of Rp 420 billion to the state and that the threat of punishment for the Petitioner was lifelong imprisonment. The methods performed by the Attorney General’s Office has resembled the political propaganda style of Dr Jozef Goebbels which has the potential to assassinate the character of the Petitioner by disregarding the presumption of innocence principle, which makes an important part of “due process of law” as one of the characteristics of a constitutional state as stated by A.V. Dicey. While in fact, in the previous colonial era, based on the Dutch colonial criminal procedure code (HIR), during investigation stage (investigator), announcing the name of a Suspect to the public was prohibited in order to prevent the occurrence of “character assassination” and “trial by press” before “trial by court”;

10. Whereas the Attorney General wishes to study Professor Romli’s cassation decision and nobody knows until when, it is up to the Attorney General and not under the Petitioner’s authority to comment. However, since the Petitioner is still banned from leaving the territory of the unitary state of the Republic of Indonesia while the Attorney General is busy studying the aforementioned decision, among other things, based on Law 6/2011 which is currently filed under a petition to be reviewed, then the Attorney General’s action

is inappropriate, even can be stated as an arbitrary action which violates the constitutional state principle, and definitely impairs the Petitioner's constitutional rights to enjoy the freedom appropriately as a citizen living in a constitutional state, as stated in the 1945 Constitution.

11. Whereas the Attorney General's activity in studying the Supreme Court's cassation decision in Professor Romli's case was once again "surprised" by the issuance of Constitutional Court Decision Number 65/PUU-VIII/2010 dated August 8, 2011, which partially granted the Petitioner's petition to review the constitutionality of Article 1 sub-articles 26 and 27 related to Article 65 *juncto* Article 116 paragraphs (3) and (4) *juncto* Article 184 paragraph (1) of Law Number 8 Year 1981 concerning Criminal Procedure Code related to the obligation of investigators to summon and examine defense witnesses whom the Petitioner requested to be examined. The Attorney General's Office, according to the Attorney General Basrief Arief, is currently "studying" the aforementioned Constitutional Court's decision to decide whether or not to summon and examine Susilo Bambang Yudhoyono and Megawati Sukarnoputri as defense witnesses requested by the Petitioner, although the Chief Justice of the Constitutional Court Professor Mahfud MD has stated that it is "mandatory" for the Attorney

General's Office to summon the aforementioned two defense witnesses "requested by Yusril" (*vide* Exhibit P-13);

12. Whereas nobody knows until when the Attorney General will study the aforementioned Constitutional Court's decision, it is not under the Petitioner's authority either to comment. But the activity of the Attorney General Basrief Arief in this studying business should not make him act arbitrarily by extending the travel ban against the Petitioner using the legal foundation of Article 97 paragraph (1) of Law 6/2011, which he may impose without any time limit even until *ila yaumul qiayamah* (until the doomsday), as long as it is extended once every 6 (six) months, with the excuse of "legal operations in the context of investigation" or other excuses according to the taste, interest, and will of the Attorney General. The Attorney General's action in banning the Petitioner without any limit on how many times the travel ban may be extended will certainly impair the Petitioner's constitutional rights. Indeed, the unlimited extension has not occurred yet, but observed from the indications as already described in the aforementioned figures, it is highly probable to occur, so that the impairment of the constitutional rights owned by the Petitioner is highly potential in nature and pursuant to logical reasoning can be assured of occurring;

13. Whereas with the coming into effect of Article 97 paragraph (1) of Law 6/2011 which grants authority to the Attorney General and other state administrators as provided for in Article 91 paragraph (2) of the Law *a quo*, to ban the Petitioner from leaving the territory of the unitary state of the Republic of Indonesia without any limit on how many times the travel ban may be extended, the Petitioner's impairment of such constitutional rights and/or authority, although still in the form of potential impairment, but pursuant to logical reasoning, can be stated as something which is assured of occurring. Therefore, the Petitioner's impairment of such constitutional rights and/or authority is definitely specific and actual in nature. Even in the current travel ban period, which has been effective since June 25, 2010, the impairment of such constitutional rights and/or authority really exists and has actually and specifically occurred. Actual, since the Petitioner really may not leave the territory of the unitary state of the Republic of Indonesia, since the Petitioner's name is included on the list of the names of people who are banned in the computers in every immigration office in our motherland, even in the representative offices of the Republic of Indonesia abroad. Specific, since the Petitioner has been placed in uncertainty, namely until when the travel ban will last, in view of Article 97 paragraph (1) of Law 6/2011 which grants authority to the

Attorney General to continuously extend the travel ban period on the Petitioner without any limit on how many times it may be extended. Waiting in uncertainty is psychologically agonizing. This has definitely impaired the Petitioner's constitutional rights granted by Article 28D paragraph (1) of the 1945 Constitution.

14. Whereas with the granting of the Petition for this review of Law, as shall be further expressed in the *petitum* of the petition, the Petitioner expects that the Petitioner's constitutional rights to obtain "the recognition, guarantee, protection and legal certainty of just laws" as well as "the right to choose residence in the state territory and to leave it, and shall have the right to return", particularly the phrase "and to leave it" will not or will no longer occur. Whereas wherever the Petitioner wishes to go by leaving the territory of the unitary state of the Republic of Indonesia is fully the personal matter of the Petitioner which cannot be interfered by whomsoever, including by the Government. The Government may not intervene the constitutional rights of its citizens granted by the 1945 Constitution.
15. Whereas based on the argumentation as already described in points 1 to 14 above, the Petitioner has a conclusion, that the Petitioner has legal standing to file this petition, based on 5 (five)

reasons, namely: (1) The Petitioner is an individual citizen of the Republic of Indonesia; (2) As a citizen, the Petitioner has constitutional rights, the norm of which has been provided for and granted by the 1945 Constitution, namely the constitutional right not to be treated arbitrarily by state administrators as a consequence of the declaration as a constitutional state or "*rechtsstaat*" as provided for in Article 1 paragraph (3) of the 1945 Constitution, the constitutional right to obtain the guarantee, protection, and legal certainty of just laws as provided for in Article 28D paragraph (1) of the 1945 Constitution; and the freedom to "to choose residence in the state territory and to leave it, and shall have the right to return" as provided for in Article 28E paragraph (1) of the 1945 Constitution; (3) The aforementioned Petitioner's constitutional rights have been in fact actually and specifically impaired by the coming into effect of the norm of Article 97 paragraph (1) of Law 6/2011, which grants authority to the Attorney General to ban the Petitioner from leaving the territory of the unitary state of the Republic of Indonesia, and to extend it without any limit on how many times the travel ban may be extended; (4) The aforementioned impairment of such constitutional rights and/or authority definitely occurs due to causal relationship (*causal verband*), namely the Petitioner's constitutional rights are impaired

by the Attorney General's action whom has been granted the authority to extend travel ban against the Petitioner without any time limit based on Article 97 paragraph (1) of Law 6/2011 which is currently filed under petition for review; (5) With the issuance of Constitutional Court's decision which is expected to grant the *petitum* of this petition, such impairment of the Petitioner's constitutional rights and/or authority is expected never or not to occur anymore.

III. Constitutional Argument that Article 97 paragraph (1) of Law 6/2011 is inconsistent with Article 1 paragraph (3), Article 28D paragraph (1), and Article 28E paragraph (1) of the 1945 Constitution

1. Whereas the unitary state of the Republic of Indonesia, as declared by Article 1 paragraph (3) of the 1945 Constitution is a "constitutional state". The drafters of the 1945 Constitution stated that the state of the Republic of Indonesia is a state which is based on law (*rechtsstaat*), not based on mere power (*machtsstaat*). The use of the term "*rechtsstaat*" shows that the drafters of the 1945 Constitution used the concept of constitutional state in Germany at that time. Julius Stahl, a German jurist, mentioned that there are three characteristics of constitutional state in the "*rechtsstaat*" concept, two of them are "protection of human rights" and "the

government should be based on the Constitution". At the same time, the drafters of the 1945 Constitution unequivocally stated that the state of the Republic of Indonesia is not "based on mere power" or "*machtsstaat*", which in German Language has the meaning that the country is organized based on mere power, not based on law.

2. Whereas in a "*machtsstaat*", state administrators may act arbitrarily according to their own taste as proposed in the concept of "integralistic" or "totalitarian" state proposed by Hegel and practiced in Germany under the *National Sozialismus* (NAZI) regime led by Adolf Hitler. Indonesia is certainly not such state. The declaration of Indonesia as a constitutional state or "*rechtsstaat*" contains the implication that in this country, state administrators have to protect human rights, and state organization should be based on the Constitution. Declaration as a constitutional state also brings the implication that the state administering apparatus may not act arbitrarily against its citizens. This implication is indeed not explicitly stated as the citizen's constitutional right in the 1945 Constitution, but based on logical reasoning, the declaration as a "constitutional state" indeed brings the implication that citizens have the right not to be treated arbitrarily by their state administrators. At the same time, the declaration as a "constitutional state" also brings the implication that in this country, there may not be any norm of Law

which is formulated in such a way as to open the opportunity for state administrators to act arbitrarily and to be provided with legal foundation by the norm of Law to do so;

3. Whereas the norm contained in Article 97 paragraph (1) of Law 6/2011 which grants authority to state administrators, which consist of, among other things, as stated in Article 91 of the Law *a quo*, the Minister of Law and Human Rights, the Minister of Finance, the Attorney General, the Chief of the National Police of the Republic of Indonesia, and the Chairperson of the Corruption Eradication Commission as well as the Head of the National Narcotics Agency, to impose travel ban on a person from leaving the territory of the unitary state of the Republic of Indonesia for a maximum period of 6 (six) months, and also the authority to extend the travel ban period by 6 (six) months at any time, without any limit on how many times it may be extended. Such norm of Law has opened the greatest opportunity for such state administrators to act arbitrarily, violate human rights and violate citizens' constitutional rights granted by the Constitution. Such arbitrary action is inconsistent with Article 1 paragraph (3) of the 1945 Constitution, which states that the state of the Republic of Indonesia is a "constitutional state" or "*rechtsstaat*". Otherwise, it can even bring the state of the

Republic of Indonesia into a “mere power-based state” or “*machtsstaat*”.

4. Whereas as mentioned by Stahl, one of the characteristics of a constitutional state is the existence of recognition and protection of human rights. A person’s right and freedom to choose residency in the territory of his own country, as well as the right to leave the country and the right to return to his original country, are human rights secured in Article 12 of the International Covenant on Civil and Political Rights, which has been ratified by the Government by Law Number 12 Year 2005. As a member country of the United Nations, Indonesia has the obligation to respect human rights. The respect is, among other things, set out in the Article of Law Number 39 Year 1999 concerning Human Rights, formation of the National Commission on Human Rights, formation of the State Ministry of Human Rights Affairs in 1999, which was subsequently integrated into the Department of Justice and Human Rights in 2001, the name of which is currently changed into the Ministry of Law and Human Rights. Therefore, it is a fatal error, that the President and the People’s Legislative Assembly under the mutual agreement have legalized Law 6/2011, which definitely contains a norm which violates human rights, particularly in Article 97 paragraph (1);

5. Whereas in the Reformation era, the 1945 Constitution has been amended in such a way, and placed a fairly large portion for the recognition and protection of human rights and also has confirmed the citizen's right and freedom to choose residence within the territory of his own country and the right to leave his country as well as the right to return to his own country as human rights, as provided for in Article 28E paragraph (1) of the 1945 Constitution under Chapter XA entitled "HUMAN RIGHTS";

6. Whereas the norm of Law as contained in Article 97 paragraph (1) of Law 6/2011, which grants authority to certain state administrators to impose travel ban on a person by extending it every 6 (six) months without any limit on how many times the travel ban may be extended, has in fact denied a citizen's constitutional right to obtain the recognition, guarantee, protection and legal certainty of just laws as provided for in Article 28D paragraph (1) of the 1945 Constitution. The citizen being banned from leaving the territory of the unitary state of the Republic of Indonesia without any limit on how many times the travel ban may be extended, is in substance the same as granting authority to impose travel ban on a person for life. Such authority clearly does not provide a fair recognition to the right and freedom owned by every person, as appropriate for a citizen who possesses recognized constitutional rights.

7. Whereas the act of travel ban as provided for in Articles 91 to 97 of Law 6/2011 is a mere administrative action granted to certain state administrators, and not at all an act of house or city arrest imposed on a suspect which is regulated based on the Criminal Procedure Code as stated in Article 22 paragraph (1) of Law Number 8 Year 1981 concerning the Criminal Procedure Code. While in fact, the fate of the banned person is actually worse than the fate of a person charged with city arrest. A person who is totally banned may not leave the territory of the unitary state of the Republic of Indonesia. While a person charged with city arrest may travel anywhere, including abroad, as long as he reports to law enforcer that arrests him at certain times as compulsory. However, there is a compensation given to city arrest, namely the period of detention is reduced by the length of the pronouncement of verdict, should the person be sentenced to jail, namely calculated from one fifth of detention period in state detention house [Article 22 paragraph (5) of the Criminal Procedure Code]. On the contrary, if the person is decided to be free or acquitted, as a compensation the person has the right for compensation for having been arrested;
8. Whereas unlike city arrest as described in point 7, there is no compensation given by law for travel ban. If the banned person is

decided to be free by court since the accusation on him is not proven, or decided to be acquitted since the subject matter being accused is not a criminal act, the person is not entitled to any compensation, as the entitlement to an arrested person. So is the case if he is sentenced to a punishment because the accusation is legally and convincingly proven, the travel ban period is not reduced either from the length of pronounced verdict, should the person be sentenced to jail. Therefore, the norm of Law regulating the travel ban itself definitely has an unfair and arbitrary characteristic. Particularly, granting authority to certain state administrators to extend travel ban without any limit on how many times it may be extended not only constitutes injustice and arbitrariness, but also a cruelty which is inconsistent with the principle of fair recognition to a person, which definitely violates the norm of Article 28D paragraph (1) of the 1945 Constitution;

9. Whereas Article 24 of Law Number 8 Year 1981 concerning the Criminal Procedure Code unequivocally restricts the maximum period of detention which may be imposed by an Investigator, namely 20 days and may be extended by the Public Prosecutor for a maximum of another 40 days in the event that the investigation is not completed yet. Therefore, an Investigator of the Office of the General Attorney, pursuant to the Criminal Procedure Code, is only

permitted to detain a suspect for a maximum of 60 days only. If the investigation is still not yet completed, after the maximum period of 60 days has passed, the investigator “is already obliged to release the suspect from the detention for the sake of justice”. However the Attorney General, who is the superior of the investigator of the Attorney General’s Office, may impose travel ban for a period of 6 (six) months, and may extend it at will, insofar as the extension is imposed once every six months without any limit on how many times it may be extended. Such authority is definitely inconsistent with Article 1 paragraph (3), Article 28D paragraph (1), and Article 28E paragraph (1) of the 1945 Constitution.

10. Whereas Articles 24 to 28 of the Criminal Procedure Code only grant the authority to the Investigator, Public Prosecutor as well as judge for detention and its extension, the total length of which may not exceed 400 (four hundred days). This detention period with a maximum limit of 400 (four hundred) days is already divided among different law enforcers, namely investigators, public prosecutors, district court judges, high court judges, and supreme judges, with the intention to prevent arbitrary and unnecessary detention. Meanwhile, the authority to impose Travel Ban in Criminal Case provided for in Article 35 sub-article f of Law Number 16 Year 2004 *juncto* Article 91 of Law 6/2011 is the authority placed in one hand

of state administrator (law enforcer), namely the Attorney General, without any control from other state administrators. The authority of travel ban imposed by one state administrator without any control from other state administrators, which can be extended at any time for 6 (six) months without any limit on how many times it may be extended, opens the opportunity for power abuse and arbitrary action which are inconsistent with the Constitutional state principle as provided for in Article 1 paragraph (3) of the 1945 Constitution, are inconsistent with the principle of legal certainty of just laws as provided for in Article 28D paragraph (1) of the 1945 Constitution and are inconsistent with every person's right to leave the territory of this state freely at any time they wish as provided for in Article 28E paragraph (1) of the 1945 Constitution;

11. Whereas the norm of law as contained in Article 97 paragraph (1) of Law 6/2011, which grants authority to certain state administrators to extend travel ban to a person without any limit on how many times it may be extended, has definitely denied the citizen's constitutional right to obtain the legal certainty of just laws. A person who is subject to detention, either arrested inside or outside a detention house, is bound to a specific period as provided for in the Criminal Procedure Code. But a person being banned, the travel ban period of which may be extended by 6 (six) months for

every extension without any limit on how many times the travel ban may be extended, definitely constitutes an arbitrary action which causes legal uncertainty for a person, which is definitely inconsistent with the norm provided for in Article 28D paragraph (1) of the 1945 Constitution.

12. Whereas the norm of Law as contained in Article 97 paragraph (1) of Law 6/2011, which grants authority to certain state administrators to impose travel ban on a person from leaving the territory of the state of the Republic of Indonesia for a maximum period of 6 (six) months, and to be able to extend it at any time for 6 (six) months without any limit on how many times the travel ban may be extended, clearly denies a citizen's right and freedom to leave the territory of this state. Such norm of Law is definitely inconsistent with the norm of Article 28E paragraph (1) of the 1945 Constitution, which guarantees the existence of right and freedom of every person to leave this country, at any time the person wishes;
13. Whereas the rights and freedom of any person to leave the territory of the unitary state of the Republic of Indonesia as provided for in Article 28E paragraph (1) of the 1945 Constitution indeed are not categorized as "non-derogable rights" which are absolute and irreducible for whatever reason. For specific interest as the

restrictions of which have been lined out by Article 28J paragraph (2) of the 1945 Constitution, such rights and freedom may indeed be restricted by law. The Petitioner does not question the authority of government administrator of a certain state, since it is regulated by Law and consistent with what has been lined out by Article 28J paragraph (2) of the 1945 Constitution, is granted the authority to impose travel ban on a person from leaving the territory of the unitary state of the Republic of Indonesia, insofar as it is conducted for a limited period and compensated as it should. However, if the authority of travel ban may be extended any time for 6 (six) months without any limit on how many times the travel ban may be extended, as provided for by the norm of Article 97 paragraph (1) of Law 6/2011, it is then evident that such norm of Law is inconsistent with the norm of Article 28E paragraph (1) of the 1945 Constitution;

14. Whereas for the Attorney General, the authority to impose travel ban on a person from leaving the territory of the unitary state of the Republic of Indonesia, in addition to the norm provided for in Article 91 paragraph (2) of Law 6/2011, is also provided for in Article 35 sub-article f of Law Number 16 Year 2004 concerning the Attorney General's Office of the Republic of Indonesia, which states that the Attorney General has the duty and authority to "ban or deter a specific person to enter or exit the territory of the unitary state of the

Republic of Indonesia due to his involvement in a criminal case according to the laws and regulations” (*vide* Exhibit P-12). This Law does not contain a norm which states for how long the Attorney General is permitted to impose travel ban on a person from leaving the territory of the unitary state of the Republic of Indonesia. Therefore, the period should be linked to the norm provided for in Article 97 of Law No 6 Year 2011 which is currently being reviewed through this petition;

15. Whereas the reason provided by the norm of Law to the Attorney General to impose travel ban on a person based on the provision of Article 35 f of Law Number 16 Year 2004 concerning the Attorney General’s Office of the Republic of Indonesia has a limitative character, namely “due to his involvement in a criminal case”. In the context of duty and authority of the Attorney General’s Office, its main duty is to perform prosecution on criminal cases, and based on certain criminal laws, in addition to perform prosecution, it is also granted the authority to conduct investigation and inquiry. Therefore, the Attorney General’s authority to ban a specific person from leaving the territory of the state of the Republic of Indonesia “due to his involvement in a criminal case” and compulsorily “in accordance with the laws and regulations”, the norm of which is provided for in Article 35 sub-article f of Law Number 16 Year 2004,

cannot be interpreted out of the context of investigation, inquiry, and prosecution, which are all subject to the norms of the Criminal Procedure Code as provided for in the Criminal Procedure Code.

16. Whereas the Constitutional Court in Decision Number 65/PUU/VIII/2010 in legal consideration point [3.11] on pages 87-88 has stated: “Considering that a person’s rights still remain on him despite being determined as a suspect or the accused. Therefore in a constitutional state, the Criminal Procedure Code is positioned as a tool so that the imposition of legal process is carried out fairly (due process of law) for the sake of respect to human rights, which include, among other things, protection from arbitrary action of state officials, provision of various securities to suspect and the accused to fully defend themselves, implementation of the principle of the presumption of innocence, as well as implementation of the principle of equal treatment before the law”. In view of the norm of the Criminal Procedure Code which, as provided for in the Criminal Procedure Code, does not limit for how long may a person be determined as a suspect – and this is actually also inconsistent with the 1945 Constitution for which the Petitioner will subsequently file a separate petition for review – then with the excuse of “legal operations in the context of investigation”, the Attorney General may extend a travel ban on a person without any limit on how many

times the travel ban may be extended, based on the authority granted by the norm of Law provided for in Article 97 paragraph (1) of Law 6/2011. Therefore, the Attorney General is granted the freedom to act arbitrarily by the two Laws applicable in this country. With such a freedom, the Attorney General, without being able to be prevented by any person because his action is legalized by two laws, may take an arbitrary action which violates the principle of the presumption of innocence as well as disregard the principle of equal treatment before the law. While in fact, the two principles form an inseparable part of human rights, which will remain on a person despite being determined as a suspect. Therefore, for the sake of law, the norm of Law as contained in Article 97 paragraph (1) of Law 6/2011 should be declared null and void because it is inconsistent with Article 1 paragraph (3), Article 28D paragraph (1), and Article 28E paragraph (1) of the 1945 Constitution;

17. Based on the descriptions as proposed in points 1 to 15 above, it is evident that the norm of Law contained in Article 97 paragraph (1) of Law 6/2011, particularly the phrase which reads “and may be extended at any time for a maximum period of 6 (six) months” is inconsistent with the constitutional state principle as provided for in Article 1 paragraph (3) of the 1945 Constitution because it opens the opportunity for state administrators being granted the authority

of travel ban to abuse his authority and act arbitrarily against any person in this country, either citizen or non-citizen. The norm is also inconsistent with the principles of recognition, guarantee, protection, and legal certainty of just laws as well as equal treatment before the law, as provided for in Article 28D paragraph (1), and is also inconsistent with the right and freedom of every person to leave the territory of the unitary state of the Republic of Indonesia, at any time they wish, as provided for in Article 28E paragraph (1) of the 1945 Constitution;

IV. Additional Statements

1. Whereas before arriving to the conclusion of this petition, the Petitioner wants to explain the question of various parties to the Petitioner in relation to this petition, namely: Should the *petitum* of the Petitioner's petition be granted by the court, is 6 (six)-month period enough for the investigator to conduct investigation on a person who has allegedly committed a crime which is categorized as complicated, while the interested person is free to leave the territory of the unitary state of the Republic of Indonesia. Does it not make things difficult for the investigator and delay the law enforcement process? The Petitioner is not willing to be involved in a polemic in answering this question, because it is not under the

authority of the Petitioner. The Petitioner leaves the answer completely to legislators, namely the People's Legislative Assembly and the President. The Petitioner is a mere commoner without any position and power in the formation of law. The Petitioner is not an investigator either, in fact the Petitioner has the status as a suspect who is in the investigation process by investigative apparatus of the Attorney General's Office.

2. Whereas in addition, the Petitioner intentionally does not petitioned the Constitutional Court to decide on a specific period for travel ban which is longer than 6 (six) months, should the phrase "and may be extended at any time for a maximum period of 6 (six) months" in Article 97 paragraph (1) of Law 6/2011 be declared as inconsistent with the 1945 Constitution and not having binding legal force. The Petitioner realizes that the Constitutional Court's authority is limited to "negative legislation", namely the authority to declare that the norm of Law is inconsistent with the 1945 Constitution and to declare that it does not have binding legal force. However, the court does not have authority to formulate a new norm of law in lieu of the "norm of law which is declared inconsistent with the 1945 Constitution of the State of the Republic of Indonesia" as provided for in Article 57 paragraph (2a) sub-paragraph c of Constitutional Court Law.

V. Conclusions

From the descriptions as provided in points I, II, and III above, the Petitioner has come to the conclusions of this petition, which can be formulated as follows:

1. The Petitioner filed a petition to the Constitutional Court to review the norm of Law as set forth in Article 97 paragraph (1) of Law Number 6 Year 2011 concerning Immigration against the constitutional norm as provided for in Article 1 paragraph (3), Article 28D paragraph (1), and Article 28E paragraph (1) of the 1945 Constitution;
2. Based on the norms provided for in 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, Article 29 paragraph (1) of Law Number 48 Year 2009 concerning Judicial Power and Article 9 paragraph (1) of Law Number 12 Year 2011 concerning the Formation of Laws and Regulations, the Constitutional Court has authority to examine, hear and decide this petition at the first and final levels, the decision of which is final;

3. The Petitioner is an individual citizen of Indonesia who possesses constitutional rights, either direct or indirect, granted by the 1945 Constitution, particularly Article 1 paragraph (3), Article 28D paragraph (1), and Article 28E paragraph (1) of the 1945 Constitution. The aforementioned constitutional rights have obviously been impaired by the coming into effect of the norm of law as provided for in Article 97 paragraph (1) of Law Number 6 Year 2011 concerning Immigration;
4. Based on various judicial argumentations provided by the Petitioner in the descriptions in Point III above, the Petitioner has come to the conclusion that the norm of Law provided for in Article 97 paragraph (1) of Law Number 6 Year 2011 concerning Immigration, particularly the phrase which reads: “and may be extended at any time for a maximum period of 6 (six) months”, is inconsistent with the constitutional norm as provided for in Article 1 paragraph (3), Article 28D paragraph (1), and Article 28E paragraph (1) of the 1945 Constitution, therefore there are adequate grounds for the Constitutional Court to declare that the referred article is inconsistent with the 1945 Constitution, and concurrently to declare that it does not have binding legal force.

VI. *Petitum*

Based on the descriptions as provided in the entire contents of this petition, the Petitioner petitions the Panel of Justices of the Constitutional Court to pass the following decisions:

1. To declare that the Petitioner has legal standing to file a petition for review of law, namely Law Number 6 Year 2011 concerning Immigration (State Gazette 2011 Number 52, Supplement to the State Gazette Number 5254) against the 1945 Constitution of the State of the Republic of Indonesia;
2. To declare that Article 97 paragraph (1) of Law Number 6 Year 2011 concerning Immigration, particularly the phrase which reads: “and may be extended at any time for a maximum period of 6 (six) months”, is inconsistent with Article 1 paragraph (3), Article 28D paragraph (1), and Article 28E paragraph (1) of the 1945 Constitution of the State of the Republic of Indonesia;
3. To declare that Article 97 paragraph (1) Law Number 6 Year 2011 (State Gazette 2011 Number 52, Supplement to the State Gazette Number 5254) concerning Immigration, particularly the phrase which reads: “and may be extended at any time for a maximum period of 6 (six) months” does not have binding legal force;

4. To order that this decision is published in the State Gazette of the Republic of Indonesia.

Or in the event that the Panel of Justices of the Constitution has a different opinion, decisions shall be made by principles of what is fair and just.

[2.2] Whereas to substantiate his arguments, the Petitioner has presented instruments of evidence in the form of letters/articles marked as Exhibits P-1 through P-13, as follows:

1. Exhibit P-1 Photocopy of Identity Card (“ID”) of the Petitioner in the name of Prof. Dr. Yusril Ihza Mahendra;
2. Exhibit P-2 Photocopy of Law of the Republic of Indonesia Number 6 Year 2011 concerning Immigration (State Gazette 2011 Number 52, Supplement to the State Gazette Number 5254);
3. Exhibit P-3 Photocopy of the 1945 Constitution of the State of the Republic of Indonesia;
4. Exhibit P-4 Photocopy of Decision of the Attorney General of the Republic of Indonesia Number Kep-201/D/DSP.3/06/2011 dated June 27, 2011;

5. Exhibit P-5 Photocopy of Summons Letter as a Suspect dated June 25, 2010;
6. Exhibit P-6 Photocopy of Decision of the Attorney General of the Republic of Indonesia Number Kep-212/D/DSP.3/06/2011 dated June 25, 2011;
7. Exhibit P-7 Photocopy of Decision of the Attorney General of the Republic of Indonesia Number Kep-195/D/DSP.3/06/2011 dated June 24, 2011;
8. Exhibit P-8 Photocopy of Statements from the Deputy Attorney General Darmono stating that the travel ban letter issued by the Attorney General is valid;
9. Exhibit P-9 Photocopy of Polemic in a number of media concerning the decision of travel ban and deterrence on the Petitioner;
10. Exhibit P-10 Photocopy of Statement of the Officer of Attorney General Office dated August 11, 2011, August 12, 2011, and September 5,

2011, stating that the Petitioner's file has been completed or P-21;

11. Exhibit P-11 Photocopy of Statement of Attorney General Basrief Arief, dated July 6, 2011;
12. Exhibit P-12 Photocopy of Statement of Attorney General Basrief Arief, dated January 28, 2011, stating that he will study Prof. Romli Artasasmita's Cassation Decision;
13. Exhibit P-13 Photocopy of Statement of the Chief Justice of the Constitutional Court, dated August 8, 2011, stating that the Attorney General's Office is required to summon both defense witnesses (Susilo Bambang Yudhoyono and Megawati Sukarno Putri) requested by the Petitioner;

In addition, the Petitioner also presented 4 (four) experts as well as 2 (two) witnesses whose statements were heard under oath at the court hearing on November 23, 2011, with the following substance:

Experts of the Petitioner

1. **Prof. Dr. Hafid Abas**

- Article 97 paragraph (1) of Law 6/2011 granting authority to several state administrators to impose travel ban on a person from travelling abroad by extending it every six months without any limit constitutes a form of violation of citizen's human rights to obtain the recognition, guarantee, protection and legal certainty of just laws as provided for in Article 28D paragraph (1) of the 1945 Constitution.
- Banning citizens from leaving the territory of the unitary state of the Republic of Indonesia without any limit on the extension of travel ban, is logically the same as banning a person for life. Such authority definitely does not give fair recognition to the right and freedom possessed by a person, as appropriate for a citizen having recognized constitutional rights.
- As a comparison, in Law Number 9 Year 1992, it is expressly stated in Article 13 paragraph (1) that the travel ban is for a maximum period of six months and may be extended twice at most, each extension is no more than six months.

- The expert brought up case samples in other countries, namely the case of Geert Wilders who was banned and deterred because the film he published had caused anger in the international world for discrediting Islam, however, the travel ban/deterrence was given a clear time limit. It was decided that he might not leave the Netherlands to the United Kingdom during February 12, 2009 – October 13, 2009. Another case is the case of Anders Behring Breivik which was judged by the Norwegian Government as having conducted the worst humanity crime in Norway since World War II, nevertheless, the Police only needed eight weeks to complete investigation on the case.

- Another case which occurred in Rwanda also indicates that however grave the serious Human Rights crime committed is, a number of UN Security Council's resolutions still order that the investigation and court process on the responsible parties should be completed before the end of 2012. Thus, there is always a definite time limit on travel ban, deterrence, determination of suspect, the accused, so that legal certainty always exists.

- In the Helsinki Court agreed in 1975, there is a guideline referred to as *Guidelines for Co-operating in the Fields of Economics, Science, and Technology and of the Environment* which recommends omitting all obstacles restricting a person to travel domestically and abroad for the interest of science and technology advancement.
- In 1997, the UN Commission on Human Rights issued a working paper which affirms the necessity for impunity of scientists for the rights to free movement. And in the aforementioned working paper, it states that, "Travel restrictions by limiting the ability of scientists and scholars to visit or communicate with their colleagues in other countries, violate the principle of free association and violate the right to receive and disseminate information".

2. Prof. Dr. M. Tahir Azhary, S.H.

- The result of the aforementioned Article 97 paragraph (1) of Law 6/2011 is as follows: The relevant institution may repeat the travel ban every 6 months for many times without any time limit and perhaps even for a lifetime of the Indonesian citizen being banned, including the Petitioner.

- No legal certainty (*onrechtszekerheid*) which impairs legal interest, constitutional rights, civil rights, and human rights of the Petitioner, and other Indonesian citizens. Article 1 paragraph (3), Article 28D paragraph (1), and Article 28E paragraph (1) of the 1945 Constitution provide for the following provisions. Article 1 paragraph (3), “The State of Indonesia is a constitutional state.” Article 28D paragraph (1), “Every person has the right to the recognition, guarantee, protection, and legal certainty of just laws as well as equal treatment before the law.” Article 28E paragraph (1), “*Every person is free to embrace a religion and to worship in accordance with their religion, to choose education and teaching, to choose occupation, to choose citizenship, to choose residence in the state territory and to leave it, and shall have the right to return.*”

- In the event that there is a conflict or inconsistency between a Law and the Constitution, the one which should be the constitutional guideline or benchmark is the Constitution. In other words, the substance of a law may not be inconsistent with the basic principles, or fundamental provisions in the Constitution.

- The Petitioner in his petition has clearly proven that Article 97 paragraph (1) of Law 6/2011, which is positioned below the 1945 Constitution, is inconsistent and not in accordance with the provisions of Article 1 paragraph (3), Article 28D paragraph (1), and Article 28E paragraph (1) of the 1945 Constitution. It is highly regrettable that the drafters of Law 6/2011, particularly Article 97 paragraph (1) in the phrase which permits the imposition of travel ban from going abroad for six month on Indonesian citizens and the extension of such travel ban every six months without any time limit, when they were drafting the aforementioned Law 6/2011, did not observe or at least disregarded the provisions of the 1945 Constitution which are provide for in the articles *a quo*.
- Article 97 paragraph (1) of Law 6/2011 reflects authoritarian legal politics which is completely inconsistent with the 1945 Constitution, the characteristics of the constitutional state of Indonesia which applies the principles of constitutional state and democracy. In addition, Article 97 paragraph (1) of Law 6/2011 is also highly inconsistent with the principles of just laws and equal treatment before the law, as well as recognition and protection of universal human rights. Therefore, Article 97 paragraph (1) of Law 6/2011 should not

be preserved. In other words, its existence ought to be terminated, eliminated, and declared as null and void as well as not binding.

- Furthermore, Article 97 paragraph (1) contains elements which rather reflect and emphasize political power than legal power. While in fact, as declared in the 1945 Constitution of the State of the Republic of Indonesia Article 1 paragraph (3) that Indonesia is a constitutional state, law is therefore the highest component in the life of the nation and society, while political power is the second component and has to be inferior to legal power and provided for by law.
- Article 97 paragraph (1) of Law 6/2011 is inconsistent and not in accordance with the provisions of Article 1 paragraph (3), Article 28D paragraph (1), and Article 28E paragraph (1) of the 1945 Constitution. The aforementioned travel ban which may be extended so many times without any limit has reflected authoritarian legal politics which is inconsistent with the 1945 Constitution and the principles of just laws and equal treatment before the law, as well as recognition and protection of universal human rights.

- Based on the reasons in this legal opinion and the Petitioner's arguments, it would be appropriate for the Constitutional Court to Accept the Petitioner's petition and to Declare that Article 97 paragraph (1) of Law 6/2011 is null and void, not binding, and does not have legal force.

3. Dr. Ifdal Kasim, S.H., LL.M

- The right to move freely has been a serious issue since the Roman empire. A more progressive development is recorded to occur in the United Kingdom. In 1215, it was the first time the right to move freely was written in an act known as Magna Carta. Article 42 of Magna Carta formulates the guarantee of protection of the aforementioned right to move freely in the following excerpt: *"It shall be lawful to any person for the future, to go out of our kingdom, and to return safely and securely, by land or by water, saving his allegiance to us, unless it be in time of war, for some short space, for the common good of the kingdom: excepting prisoners and outlaws, according to the laws of the land, and of the people of the nation at war against us, and merchants who shall be treated as it is said above."*

- In the period of the holy Roman empire, in 1781, Joseph II took a progressive step in that period, namely by permitting slaves to enjoy the right to move freely. Slaves in Russia were not granted their personal freedom until Alexander II formulated slave emancipation in 1861.
- Development in the awareness of guarantee of protection of the right to move freely in the aforementioned timeline of history constitutes an antecedent of the birth of the international human rights regime which asserts the aforementioned right to move freely in the current modern century.
- The universal declaration of human rights constitutes one of the most influential soft law instruments. So is the International Covenant on Civil and Political Rights, which currently constitutes the hard law instrument most ratified by countries. Both international human rights instruments which are recognized by the international community as the International Bill of Human Rights, recognize the importance of guarantee of protection of the right to move freely, liberty of movement is indivisible condition for the free development of a person, which is so confirmed by the Commission on

Human Rights supervising the implementation of the aforementioned covenant on civil and political rights.

- Article 13 of the Universal Declaration of Human Rights formulates the following. *“Everyone has the right to freedom of movement and residence within the borders of each state.”* Paragraph (2), *“Everyone has the right to leave any country, including his own, and to return to his country.”* It is formulated more elaborately in Article 12 of the International Covenant on Civil and Political Rights as follows. Paragraph (1), *“Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.”* Paragraph (2), *“Everyone shall be free to leave any Country, including his own.”* Paragraph (3), *“The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.”* Paragraph (4), *“No one shall be arbitrarily deprived of the right to enter his own country.”*

- In line with the aforementioned development at international level, similar development also takes place at national level in terms of the occurrence of norms guaranteeing the protection of the right to move freely.
- Nowadays, almost all constitutions of states, either democratic states or non-democratic states, respect this strategic and very important right. For example, South Africa, the country's post-apartheid constitution provides guarantee to move freely for its citizens. In addition, South African constitution explicitly guarantees that its citizens have the right to obtain a passport.
- Indonesia cannot escape from the development explained above. The Amendment to the 1945 Constitution also provides a strong guarantee for the aforementioned right. Article 28E paragraph (1) formulates in the same breath as other rights as follows. "Every person is free to embrace a religion and to worship in accordance with their religion, to choose education and teaching, to choose occupation, to choose citizenship, to choose residence in the state territory and to leave it, and shall have the right to return."

- Therefore, it is clearly evident that every Indonesian citizen is free to choose residence and to leave it, and has the right to return. It means that, the right to move freely has become a constitutional right for every Indonesian citizen. This constitutional right is further elaborated in more details in Law Number 39 Year 1999 concerning Human Rights.
- This right to move freely does not constitute one of the rights included in the category of nonderogable rights, but included in the category of permissible rights. Provided that the restriction must be stipulated by laws, must be in line with other rights recognized by the covenant, fulfill one of the purposes of intervention stated in the provision, and last, must be necessary and proportional in a democratic society.
- Under the proportionality principle, there are at least three different aspects which have to be observed, the three different principles are: restrictive measure must be their very nature to be appropriate to achieve their protective function.
- Second, they must be the least intrusive instrument amongst those which achieve the desired result, and last, they must be proportionate to the interest to be protected.

- This restrictive provision also needs to be kept in mind. The 1945 Constitution also outlines guidelines or requirement, on how restriction of rights ought to be done.
- Article 28J of the 1945 Constitution, particularly paragraph (2) states, *“In exercising their right and freedom, every person must submit to the restrictions stipulated in laws and regulations with the sole purpose to guarantee the recognition of and the respect for other people's rights and freedom and fulfill fair demand in accordance with the considerations of morality, religious values, security, and public order in a democratic society.”* Therefore, drafters of Law which will restrict citizen’s rights and freedom, should observe the phrase “fulfill fair demand” as the intended purpose of the aforementioned restrictive provision.
- The issue in the effort to protect human rights is the provision of Article 97 paragraph (1) of Law 6/2011 which reads, “The Travel ban shall be applicable for a maximum period of 6 (six) months and may be extended at any time for a maximum period of 6 (six) months...” which is currently subject to constitutional review by the Petitioner in this case. It is evident that the phrase “and may be extended at any

time for a maximum period of 6 months” may be interpreted excessively by state administrators who are granted the authority by this Law to impose travel ban.

- The aforementioned provision of Article 97 paragraph (1) of the Law *a quo* should therefore be reviewed with regard to the proportionality principle, which is one of the measurements of the justified restriction of rights. As already discussed, there are three different aspects of this principle, one of which is the principle that they must be proportionate to the interest to be protected. In this context, time or duration is very important.
- Travel ban constitutes a restriction on freedom to move which is justified based on public interest, however, provided that the restriction must be stipulated by Law, must be in line with other rights recognized by the covenant, fulfill one of the purposes of intervention stated in the provision, and last, must be necessary and proportional in a democratic society. The phrase “and may be extended at any time for a maximum period of 6 months” in the norm *a quo* may be interpreted excessively by state administrators who are granted the authority by this Law to impose travel ban, so

that this provision is inconsistent with the constitutional rights set forth in the 1945 Constitution;

4. Dr. Abdul Hakim Garuda Nusantara, S.H., LL.M

- Article 94 paragraph (7) of the Law *a quo* grants authority to the minister or a designated immigration officer to include the identity of the person subject to the decision of travel ban on the list of travel ban through immigration management information system. Based on the aforementioned travel ban list, the immigration officer is obliged to prevent the banned person from leaving the Indonesian territory. So far, we witness the guarantee of immigration officer's legal authority to impose temporary prohibition on the person from leaving the Indonesian territory based on an immigration reason or other reasons provided for by the Law. However, the legal authority granted by the Law *a quo* to the minister or immigration officers is potentially abused or abusive, so that it results in violation of Human Rights of the banned person.

- Article 97 paragraph (1) of the Law *a quo* which states that the Travel ban shall be applicable for a maximum period of six months and may be extended at any time for a maximum period of six months opens up the opportunity to abuse the

said legal authority. The formulation or phrase “and may be extended at any time for a maximum period of six months” opens up the opportunity for immigration officers or authorities to extend the travel ban period continuously once every six months, which causes the banned persons to be in a situation full of legal uncertainty which certainly affects their future.

- Continuous extension of the travel ban on a person from leaving the Indonesian territory once every six months, as permitted by Article 97 paragraph (1) of the Law *a quo*, directly results in the banned person being held in domestic detention for an uncertain period, without being subject to any clear and justifiable legal claim. It means that the person, whose travel ban is continuously extended, is held in a preventive detention for an uncertain period.
- Preventive detention constitutes a nasty form of detention which was often used in the past by authoritarian or totalitarian government regimes to imprison the parties being critical against the government.
- Preventive detention with its uncertain ending definitely violates human rights as provided for in the international law

on human rights, the Human Rights Law, and the 1945 Constitution.

- The aforementioned legal authority granted by the Law *a quo* to the minister or immigration officer is potentially abused or abusive, so that it results in a violation of human rights of the banned person. The formulation of this Article 97 paragraph (1) opens up the opportunity for immigration officers or authorities to extend the travel ban period continuously once every six months, which causes the banned persons to be in a situation of legal uncertainty which may affect their future.

Witnesses of the Petitioner

1. Dr. H.A.M. Fatwa

- As a witness of fact, he explained the event that he experienced himself when he was banned without any time limit and travel ban letter during the New Order government era since 1980.
- The witness, as one of the figures who signed the Petition 50 in the New Order era, without any official letter had been deprived of his civil rights, such as not being allowed to lend

money from banks, not being allowed to be present at events under one roof together with RI 1 and RI 2 (the President and the Vice President of the Republic of Indonesia), and not being allowed to travel abroad.

- When a political change occurred, without any revocation of letters or announcement, he was suddenly not banned anymore from travelling abroad, he was even facilitated to travel abroad.

2. Fahri Hamzah

- As a Witness of fact, he explained the event that he experienced himself when he still held the position as the Head of the Working Committee for the Discussion of Draft Law on Immigration. During the discussion, the team focused themselves not to grant much discretion to state administrators, including in terms of travel ban.
- During the discussions, the Draft Law on Immigration had the tendency to diminish the power or role of the state and strengthen the civil freedom.
- In leading the Working Committee, the Witness had a commitment, together with all other members of the

assembly, to supervise that there would be no excessive discretion and to diminish anything which is deemed excessive in the previous Law.

- In the previous Law, the decision of travel ban is less strict, since it was restricted to a maximum period of two years.

[2.3] Whereas against the Petitioner's petition, the Government delivered an opening statement orally at the hearing on November 16, 2011, as well as delivered a written statement and conclusion on November 30, 2011, received by the Registrar's Office of the Constitutional Court on December 1, 2011, which in substance states as follows:

I. THE SUBSTANCE OF THE PETITIONER'S PETITION

1. The norm contained in Article 97 paragraph (1) of the Immigration Law granting authority to certain state administrators to impose travel ban on a person from leaving the Indonesian territory has opened up the greatest opportunity for such state administrators to act arbitrarily, violate human rights and violate citizen's constitutional rights which are inconsistent with Article 1 paragraph (3) of the 1945 Constitution.
2. The norm of Article 97 paragraph (1) of the Immigration Law granting authority to certain state administrators to impose travel

ban on a person from leaving the Indonesian territory with extension of every 6 (six) months without any limit on how many times the travel ban may be extended, has denied the citizen's constitutional rights to obtain the recognition, guarantee, protection, and legal certainty of just laws as provided for in Article 28D paragraph (1) of the 1945 Constitution;

3. In brief, the Petitioner is of the opinion that the provision *a quo*, particularly *the phrase "and may be extended at any time for a maximum period of 6 (six) months"* is inconsistent with Article 1 paragraph (3), Article 28D paragraph (1), and Article 28E paragraph (1) of the 1945 Constitution of the State of the Republic of Indonesia.

II. REGARDING THE LEGAL STANDING OF THE PETITIONER

The provision of Article 51 paragraph (1) of Law Number 24 Year 2003 concerning the Constitutional Court as amended by Law Number 8 Year 2011 states that the Petitioner shall be the party considering that his/her constitutional rights and/or authority are impaired by the coming into effect of a Law, namely:

- a. individual Indonesian citizens;

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

The aforementioned provision is further affirmed in its elucidation, that referred to as “*constitutional rights*” are the rights provided for by the 1945 Constitution.

Hence, in order that a person or a party can be accepted as the Petitioner having legal standing in the petition for review of a Law against the 1945 Constitution, the Petitioners must first explain and substantiate:

1. His qualification in the petition *a quo* as referred to in Article 51 paragraph (1) of Law Number 24 Year 2003 concerning the Constitutional Court as amended by Law Number 8 Year 2011;
2. His constitutional rights and/or authority in such qualification which are considered to have been impaired by the coming into effect of the Law being petitioned for review;

3. The impairment of the Petitioner's constitutional right and/or authority as a result of the coming into effect of the law being petitioned for review.

Furthermore, the Constitutional Court, following the decision Number 006/PUU-III/2005 and the decision Number 11/PUU-V/2007, as well as subsequent decisions, has provided the cumulative definition and limitations of the impairment of constitutional rights and/or authority resulting from the coming into effect of a law pursuant to Article 51 paragraph (1) of Law Number 24 Year 2003 concerning the Constitutional Court as amended by Law Number 8 Year 2011, which must meet 5 (five) requirements, namely:

- a. the existence of constitutional rights and/or authority of the Petitioner granted by the 1945 Constitution of the State of the Republic of Indonesia;
- b. whereas the Petitioner considers that such constitutional rights have been impaired by the Law being petitioned for review;
- c. whereas such impairment of the Petitioner's constitutional rights and/or authority is specific (special) 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 being petitioned for review;
- e. the possibility that with the granting of the petition, the argued impairment of such constitutional rights and/or authority will not or will no longer occur.

Based on the above-mentioned matters, the Government is of the opinion that the Petitioner's interest needs to be questioned, whether it is appropriate for him to be the party considering that his constitutional rights and/or authority are impaired by the coming into effect of Article 97 paragraph (1) of the Immigration Law. Also, whether the said impairment of the Petitioner's constitutional rights and/or authority is specific (special) and actual or at least potential in nature which, pursuant to logical reasoning, can be assured of occurring, and whether there is a causal relationship (*causal verband*) between the said impairment and the coming into effect of the law being petitioned for review.

With respect to the aforementioned questions, apparently the following matters need to be regarded carefully:

1. In the Government's opinion, what the Petitioner experienced rather constitutes an implementation issue of the applicability of a provision/norm being reviewed than a constitutionality issue of the applicability of a norm.
2. in the Government's opinion, what the Petitioner should do is reviewing whether the process of travel ban from leaving the Indonesian territory in the process of investigation experienced by the Petitioner is in accordance with the prevailing laws and regulations as well as reflecting the due process of law, or whether the decision of travel ban is considered as having damaged the Petitioner's sense of justice due to an error or a mistake of the authorized officer.
3. Should in the implementation, the Petitioner feel that the travel ban experienced by the Petitioner is not in accordance with the prevailing laws and regulations, pursuant to Article 96 of the Immigration Law, the Petitioner may file an objection to the officer's decision rather than filing the constitutionality of the applicability of the provision *a quo* to the Constitutional Court.

Based on the above-mentioned matters, the Government is of the opinion that the Petitioner in this petition **does not qualify** as a party having legal standing as intended in the provision of Article 51 paragraph (1) of Law Number 24 Year 2003 concerning the Constitutional Court as amended by Law Number 8 Year 2011 as well as based on previous Constitutional Court's decisions.

Therefore, the Government is of the opinion that it would be appropriate for Your Excellency Chief Justice/Panel of Justices of the Constitutional Court to judiciously declare that the Petitioner's petition is inadmissible (*niet ontvankelijk verklaard*).

Nevertheless, in the event that Your Excellency Chief Justice/Panel of Justices of the Constitutional Court has a different opinion, we hereby convey the Government's statements, as follows:

III. THE GOVERNMENT'S EXPLANATION ON THE SUBSTANCE BEING PETITIONED FOR REVIEW BY THE PETITIONER

Before conveying the Statements related to the substance of the norm being petitioned for review by the Petitioner, the Government will convey the philosophical basis of travel ban as referred to in the Immigration Law, namely as follows:

A. Philosophy of Travel ban

Whereas the freedom of movement of every person is recognized as human rights as stated in international conventions, among other things, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR), also in the provision of Article 28E paragraph (1) of the 1945 Constitution of the State of the Republic of Indonesia which reads: “**Every person is free to embrace a religion and to worship in accordance with their religion, to choose education and teaching, to choose occupation, to choose citizenship, to choose residence in the state territory and to leave it, and shall have the right to return.**”

Although human rights recognize and guarantee the freedom of every person to move, such freedom is not the freedom at its largest (absolute freedom). In this case, the state may restrict human’s freedom of movement based on the consideration of a state’s interest with legally clear and rational reasons, among other things, by the reasons of national security, public order, public health and morality as well as public interest.

In addition, in international terms the right to move freely is restricted by the international convention in Article 12 sub-article 3 of the International Covenant on Civil and Political Rights, as well as other regional legal instruments such as the 4th Protocol to the European Convention and American Convention as well as African Charter. All of them point towards

a restriction on the freedom to move which should have legally clear and rational reasons related to the effort to protect national security and public order.

Requirement for restriction in the 4th Protocol to the European Convention and American Convention refers to a reason which is indeed required in a democratic society. More explicitly, the American Convention and the African Charter add the sentence of benefit to society and public morals as the reasons, as well as the American Convention and the 4th Protocol to the European Convention which also add public security as the reason.

Hence, the restriction on the freedom of movement against a person is internationally allowed for reasons adjusted to the interest of a state, which is implemented in the state's laws and regulations.

Furthermore, Article 28J paragraph (2) of the 1945 Constitution reads: "*In exercising their right and freedom, every person must submit to the restrictions stipulated in laws and regulations with the sole purpose to guarantee the recognition of and the respect for other people's rights and freedom and fulfill fair demand in accordance with the considerations of morality, religious values, security, and public order in a democratic society.*" Therefore, a restriction of every person's right to freedom of movement and other restriction of human rights may be imposed, as long as the restriction is stipulated by Law, the formation of which is not based

on arbitrary action/conduct (*willekeur*) and also is not based on the abuse of authority (*de tournement de pouvoir*), and also recognizes the existence of a restriction of every person's right to freedom of movement under a Law with the sole purpose of guaranteeing the recognition as well as the respect for the rights and freedom of other people and fulfilling fair demand in accordance with moral consideration, religious values, security, and public order.

The Immigration Law regulates, among other things, the restriction on the freedom of people to move, in this case to leave the Indonesian territory is implemented in the framework of travel ban, and therefore every person whose freedom is restricted may be prevented from departing abroad for certain reasons by Immigration Officers at the place of international crossing which is, in this case, regulated in this Law as "Immigration Checkpoint".

**B. IMPLEMENTATION OF ARTICLE 97 PARAGRAPH (1) OF LAW
NUMBER 6 YEAR 2011 CONCERNING IMMIGRATION**

With respect to the substance of the norm being petitioned for review by the Petitioner, namely Article 97 paragraph (1) of the Immigration Law, particularly the phrase "*and may be extended at any time for a maximum period of 6 (six) months*", which is considered to be inconsistent with the provision of Article 1 paragraph (3), Article 28D paragraph (1), and Article

28E paragraph (1) of the 1945 Constitution, the Government may provide the following explanation:

1. The enactment of Law Number 6 Year 2011 concerning Immigration constitutes a form of reformation of immigration law, one of the Reformations of Immigration Law in Law Number 6 Year 2011 is the immigration policy legal politics which fundamentally change the point of view and paradigm of the regulation of the matters concerning the traffic of people entering or leaving the territory of the state of the Republic of Indonesia as well as its supervision in order to maintain the enforcement of state sovereignty. The reformation of Immigration Law is required to accommodate matters which are no longer relevant in the previous immigration legal politics in Law Number 9 Year 1992 concerning Immigration, which is affected, among other things, by sociological change in the life of the nation and society, international treaties and custom, as well as amendment to the provisions of the relevant laws and regulations which are related, either directly or indirectly, to the regulation of the matters concerning the traffic of people entering or leaving the territory of the state of the Republic of

Indonesia as well as its supervision in order to maintain the enforcement of state sovereignty.

2. Whereas Law Number 6 Year 2011 concerning Immigration constitutes a form of materialization of the more comprehensive political aspiration of the immigration law in the future (*ius constituendum*) which is able to adjust to the development of the society and the country and anticipative towards future issues;
3. The Immigration Law applies the principle that every Indonesian citizen has the right to exit from or enter the Indonesian Territory. However, based on a certain reason and for a certain period, Indonesian citizens may be banned from leaving the Indonesian Territory. This principle may be found in the General Elucidation of the Immigration Law.
4. Whereas the authority to prevent a person, who is required for the purpose of investigation and inquiry, from travelling outside the Indonesian territory, is a part of the process of criminal law enforcement in Indonesia known as the Integrated Criminal Justice System mechanism. The Integrated Criminal Justice System mechanism is a system which considers the settlement process of a criminal case as

an integral part, from investigation, inquiry, prosecution, case decision to imposition of criminal sanction and the settlement at penitentiary level, including restriction authority in the form of travel ban and/or detention action;

5. Whereas Indonesia as a constitutional state grants a constitutional guarantee for the respect and fulfillment of human rights. So that every Indonesian citizen obtains the equal opportunity in exercising his/her rights to exit from or enter the Indonesian territory. Therefore, it is unjustifiable to impose a deterrence action on an Indonesian citizen for any reason whatsoever. However, based on a certain reason and for a certain period, an Indonesian citizen may be banned from leaving the Indonesian territory. The aforementioned constitutional right is restricted by the coming into effect of Article 28J of the 1945 Constitution, which substantially states that a person's constitutional rights may be restricted by law, and one of the Laws restricting constitutional rights and human rights is the provision set forth in criminal law. In any states in the world, the rights of a person committing a criminal act or allegedly committing a criminal act would certainly be restricted, including the rights guaranteed by the constitution. For example, a person is

granted the right by the constitution to work as guaranteed by Article 28D paragraph (2) of the 1945 Constitution, however if he becomes a suspect and or the accused and must be held in detention, his right to work would be restricted.

6. The travel ban regulation constitutes one of the principles of the manifestation of state sovereignty to restrict a person's right to leave the territory of the state of the Republic of Indonesia. This restriction is in the form of temporary prohibition for a person to leave the territory of the state of the Republic of Indonesia based on an immigration reason or other reasons stipulated by Law. The laws providing for the travel ban include as follows:

- 1) Law Number 30 Year 2002 concerning the Corruption Eradication Commission, in Article 12 paragraph (1) sub-paragraph b which reads, "(1) *In performing the **investigation, inquiry, and prosecution** tasks as intended in Article 6 sub-article c, the Corruption Eradication Commission has authority to: b. order the relevant institution to prohibit a person from travelling abroad*";

- 2) Law Number 2 Year 2002 concerning the National Police of the Republic of Indonesia, in Article 16 paragraph (1) sub-paragraph j which reads, “(1) *In order to perform the duties as intended in Articles 13 and 14 in terms of criminal process, the National Police of the Republic of Indonesia has authority to: j. submit **a request** directly to the authorized immigration official at an immigration checkpoint in case of emergency or unexpected situation to impose travel ban on or deter a person allegedly committing a criminal act*”.
- 3) Law Number 35 Year 2009 concerning the National Narcotics Agency, in the Article 71 which reads, “*In performing the duty of eradication of the abuse and illegal distribution of Narcotics and Narcotic Precursors, the National Narcotics Agency has authority to conduct investigation of an inquiry into the abuse and illegal distribution of Narcotics and Narcotic Precursors*”.
- 4) Law Number 16 Year 2004 concerning the Attorney General’s Office of the Republic of Indonesia, in

Article 35 sub-article f which reads, "*The Attorney General has the duty and authority to: f. Impose travel ban on or deter a specific person to enter or leave the territory of the Unitary State of the Republic of Indonesia due to his/her involvement in a criminal case in accordance with laws and regulations.*"

7. Article 97 paragraph (1) of the Immigration Law in full reads: *The period for Travel ban shall be applicable for a maximum period of 6 (six) months and may be extended at any time for a maximum period of 6 (six) months.* The purpose of the provision of Article 97 paragraph (1) of the Immigration Law explicitly and limitatively determines the period for Travel ban on a person to leave the Indonesian territory, namely for a maximum period of 6 months and may be extended at any time for a maximum period of 6 (six) months.
8. In the Government's opinion, the provision *a quo* has granted legal certainty by determining the travel ban period and limitative extension of travel ban, namely for a maximum period of 6 months, if after the travel ban period ends there is still no decision on the extension of travel ban period, or there is a court decision having permanent legal force which

states that the person is acquitted of the case serving as the reason for Travel ban. Hence, the Travel ban shall be expired by the operation of law (*vide* Article 97 paragraphs (2) and (3) of the Immigration Law);

9. The imposition of travel ban conducted by immigration officers is based on the request of the authorized officer. Referred to as authorized Officers as provided for in Article 91 paragraph (2) of the Immigration Law, consists of:
 - a. Minister of Finance;
 - b. Attorney General;
 - c. Head of the National Police of the Republic of Indonesia;
 - d. Chairperson of the Corruption Eradication Commission;
 - e. Head of the National Narcotics Agency; or
 - f. Head of ministries/institutions which under the Law hold travel ban authority.

The request of the authorized officer is submitted along with a written decision by the authorized officer (*vide* Article 94 paragraph (1) of the Immigration Law) and/or directly to the Immigration Officer in case of emergency (*vide* Article 92 of the Immigration Law), in this context also including the extension of travel ban period if deemed necessary by the authorized officer.

10. The travel ban imposed on a person related to investigation, inquiry and prosecution as provided for in the Criminal Procedure Code is not imposed discriminatively (conducted through a legal process), which guarantees that every citizen has equal position before the law and the government is obliged to uphold the law and the government itself without exception, both its rights and obligations, which subsequently will provide legal certainty.
11. The process of investigation, inquiry, and prosecution conducted by the Minister of Finance, the Attorney General, the Head of the National Police of the Republic of Indonesia, the Chairperson of the Corruption Eradication Commission, and the Head of the National Narcotics Agency has different purposes, characteristics, and interest bases and it is the

aforementioned officers who actually know the needs and process within their respective institutions, so that the provision on the extension of travel ban period cannot be compared. Hence, the drafters of law intend to entrust the further regulation on the time limit for the total Travel Ban period through a Law which serves as the basis for travel ban to authorized officers, which in this case are the Minister of Finance, the Attorney General, the Head of the National Police of the Republic of Indonesia, the Chairperson of the Corruption Eradication Commission, and the Head of the National Narcotics Agency. The regulation or guideline on determination of the entire time limit for Travel ban period related to the field of immigration is the implementing regulation of Law Number 6 Year 2011;

12. If the regulation on the entire time limit for Travel ban period is specifically provided for in Article 97 paragraph (1) of Law Number 6 Year 2011, the provision *a quo* shall not be futuristic and anticipative towards the future substantive development of travel ban, particularly in relation to the difference in the characteristic of lawsuits or cases being handled, such as tax, narcotics, corruption, money laundering, terrorism, etc.

13. Article 96 of the Immigration Law has provided an exit law for every person being subject to travel ban to lodge an objection to the officer issuing the decision on travel ban, for example the Minister of Finance, the Attorney General, the Head of the National Police of the Republic of Indonesia, the Chairperson of the Corruption Eradication Commission, and the Head of the National Narcotics Agency.

14. If all provisions on travel ban have been complied with, namely the authorized officer has requested a travel ban, mechanism of Request for Travel Ban through a Decision, and the Travel Ban period is in accordance with the Immigration Law, then the immigration officer will process the aforementioned request for travel ban. In other words, the immigration officer as determined in the Immigration Law only grants the request of an Officer granted the authority to request for Travel Ban on a person to leave the Indonesian territory. Therefore, the immigration officer does not possess any authority to impose travel ban on a person from leaving the Indonesian territory without any request from an authorized officer.

IV. THE GOVERNMENT'S RESPONSE TO THE PETITIONER'S QUESTIONS

Whereas at the hearing of the Constitutional Court on November 16, 2011, the Petitioner raised two questions to the Government, namely:

1. How long will the Government impose Travel Ban on a person allegedly committing a criminal act pursuant to the provision of Article 97 paragraph (1) of Law Number 6 Year 2011 concerning Immigration? The Petitioner has the assumption that the provision of Article 97 paragraph (1) of the Law *a quo* is interpreted as the basis for continuous imposition of Travel Ban (without any clear time limit). In response to the aforementioned question and assumption of the Petitioner, the Government may provide the following explanation:
 - a. whereas the drafters of Law formulating Article 97 paragraph (1) concerning "The Travel Ban shall be applicable for a maximum period of 6 (six) months and may be extended at any time for a maximum period of 6 (six) months", do not intend to impose a continuous travel ban (unlimited), since the provision of Article 97 paragraph (1) in fact has explicitly determined a (limitative) time limit for Travel ban period, namely for a maximum period of 6 (six) months. If the 6 (six)-

month period is insufficient, the authorized institution/officer as intended in Article 91 of the Law *a quo* may request for extension of travel ban to the Minister of Law and Human Rights for a maximum period of 6 (six) months;

- b. with regard to how many times the aforementioned request for extension of travel ban may be submitted, the drafters of law entrust it to the institution/officer having the authority in the field of travel ban in accordance with the provision of laws and regulations. It is intended to provide space for the authorized Institution/Officer in relation to the case or lawsuit being handled, considering that the institution/officer knows the need, characteristic, and interest base of an act of travel ban on a person for a case or lawsuit being handled. In addition, it needs to be underlined that the Minister of Law and Human Rights under Law 6/2011 has the authority in the field of travel ban, which is, among other things, to perform based on decision, request, and order from authorized institution/officer under the provision of laws and regulations (*vide* Article 91 of the Law *a quo*). Therefore, if the time limit for Travel ban has ended and the authorized Institution/Officer does not submit any request for extension of travel ban to the Minister of Law and Human Rights, the

travel ban is expired by the operation of law [*vide* Article 97 paragraph of the Law *a quo*].

2. The Petitioner has the assumption that the decision on travel ban on a person from travelling abroad is an administrative decision rather than a court decision and has no context in the criminal procedure code. Therefore, the petitioner is questioning on what if the Petitioner violates/disobeys the act of travel ban requested by the Attorney General and what is the sanction? In response to the Petitioner's assumption and question, the Government provides the following explanation:

a. whereas if the meaning of "violating/disobeying" referred by the Petitioner is an effort to insist on leaving the Indonesian territory, in the event of departure through a procedure at the Immigration Checkpoint, the immigration officer may prevent the petitioner from leaving the Indonesian territory based on the provision of Article 16 paragraph (1) sub-paragraph c of the Law *a quo*, which reads:

(1) *Immigration officers shall prevent a person from leaving the Indonesian territory if the person: c. is listed on the Travel Ban list.* In addition, the Immigration Officer also has the authority to revoke

the Petitioner's passport if it is known that the Petitioner remains insisting on leaving the Indonesian territory through the Immigration Checkpoint based on the provision of Article 31 paragraph (3) which reads:

Passport shall usually be revoked in the event that: a. the holder commits a criminal act or violates the laws and regulations in Indonesia; or b. the holder is included on the Travel Ban list.

- b. if the Petitioner intentionally enters or leaves the Indonesian territory without undergoing any inspection by immigration officers at the Immigration Checkpoint, then he shall be subject to a criminal sanction as referred to in Article 113 of the Law *a quo* which reads: "*Any person who intentionally enters or leaves the Indonesian territory without undergoing any inspection by Immigration Officers at the Immigration Checkpoint shall be subject to a criminal sanction of imprisonment of a maximum of 1 (one) year and/or a maximum pecuniary sanction of Rp100,000,000 (one hundred million rupiah)*".

V. THE GOVERNMENT'S RESPONSE TO THE STATEMENTS FROM THE PETITIONER'S EXPERTS AND WITNESSES

Whereas at the hearing of the Constitutional Court on November 23, 2011, the Petitioner presented five experts and two witnesses. With regard to the statements of the aforementioned Petitioner's experts and witnesses, the Government may provide the following explanation:

1. With regard to the witness A.M. Fatwa, who substantially told about the experience when he was deprived of his civil rights including the right to travel abroad without any stipulation letter. In response to the testimony, the Government may convey the following matters:
 - a. The Government reasonably regrets the incident experienced by the Witness around the 1980s, however in the current condition, in the Government's opinion, the provision *a quo* has provided legal certainty, with the requirement for the Decision on Travel Ban of the authorized officer (Article 94 of the Immigration Law) and the objection filling mechanism to the decision on travel ban (Article 96 of the Immigration Law). So that the Immigration Law will not be used as dominating tools by the authority by the existence of this provision as concerned by the witness;

- b. Whereas in the Government's opinion, it would be inappropriate if the Petitioner's purpose in presenting the Witnesses is to be able to state that the Immigration Law is inconsistent with the 1945 Constitution, since what had been experienced, felt by the witness has a different context of time and legal basis for the time, and cannot be used as a comparison.
2. With regard to the witness Fahri Hamzah, who substantially told about his experience as the Head of the Working Committee for the Discussion of Immigration Law. In response to the testimony, the Government may convey the following matters:
 - a. Article 20 paragraph (2) of the 1945 Constitution states that "*Every draft law shall be discussed by the People's Legislative Assembly and the President so as to reach a mutual agreement*", whereas the formulation process of the Draft Immigration Law until it becomes the Immigration Law has been in accordance with and consistent with the provision of Law Number 10 Year 2004 concerning the Formation

of Laws and Regulations as amended by Law Number 12 Year 2011.

- b. Whereas in the Government's opinion, the process of discussing the Draft Law *a quo* in the People's Legislative Assembly was conducted in a democratic atmosphere which is transparent and without any element of pressure, so that when the aforementioned Draft of Law has turned into Law, it is expected that all parties will be able to respect and implement the provisions of the Immigration Law.
3. With regard to the Petitioner's expert Hafid Abbas, who substantially was of the opinion that:
 - a. Article 97 paragraph (1) of the Immigration Law granting authority to several state administrators, among others, the Attorney General's Office, such as to impose travel ban on a person from travelling abroad by extending the travel ban every six months without any limit on how many times the travel ban may be extended, is in fact a form of violation of the citizen's fundamental right to obtain the recognition, guarantee, protection and legal certainty of just laws

as provided for in Article 28D paragraph (1) of the 1945 Constitution.

- b. The citizen being banned from leaving the territory of the unitary state of the Republic of Indonesia without any limit on the extension of travel ban period, is logically the same as banning a person for life. Such authority obviously does not give fair recognition to the rights and freedom of a person, as appropriate for a citizen who owns recognized constitutional rights.

With regard to the aforementioned expert statement, the Government may convey the following matters:

- a. In the Government's opinion, the provision *a quo* has granted legal certainty by determining a travel ban period and limitative extension of travel ban, namely for a maximum period of 6 months, if after the travel ban period ends there is still no decision on the extension of travel ban period, or there is a court decision having permanent legal force which states that the person is acquitted of the case serving as the reason for Travel Ban. Hence, the Travel Ban shall be

expired by the operation of law (*vide* Article 97 paragraphs (2) and (3) of the Immigration Law).

- b. Although human rights recognize and guarantee the freedom of every person to move, such freedom is not the freedom at its largest (absolute freedom). In this case, the state may restrict human's freedom of movement based on the consideration of a state's interest based on legally clear and rational reasons, among other things, by the reasons of national security, public order, public health and morality as well as public interest, one of the reasons is when a person is in a law enforcement process.
 - c. Fair recognition to the citizen being banned from leaving the territory of the Unitary State of the Republic of Indonesia has also been provided through the Law *a quo* by granting the right to the banned person to lodge an objection to the decision on travel ban issued by the authorized Officer.
4. With regard to the Petitioner's expert Muhammad Tahir Ashari, who substantially conveyed the statement that Article 97 paragraph (1) of the Immigration Law reflects

authoritarian legal politics which is completely inconsistent with the 1945 Constitution, the characteristic of the constitutional state of Indonesia which applies the principles of constitutional state and democracy. In addition, Article 97 paragraph (1) of the Immigration Law is also very inconsistent with the principles of justice and equality before the law, as well as recognition and protection of universal human rights. Therefore, it should not be preserved. Its existence must be terminated, eliminated, and declared null and void as well as not binding.

With regard to the aforementioned expert statement, the Government may convey the following matters:

Whereas the expert's view which supports the Petitioner suggesting that Article 97 paragraph (1) of Immigration Law, particularly the phrase "*and may be extended at any time for a maximum period of 6 (six) months*", should be declared not having binding legal force, will even raise new issues, namely, among other things, the fact that a situation will occur wherein the persons being handled by the law enforcement apparatus for complex cases, which require a longer investigation process, would freely enter and leave

the Indonesian territory without any restriction. This matter certainly may result in losses for not protecting national interest in relation to the case being handled with respect to a person on whom the act of travel ban is imposed. It has to be kept in mind that Article 97 paragraph (1) of the Law *a quo* is formulated and regulated in accordance with the legal philosophy, namely establishing public order and protection of public interest, through the effort to redress the balance in the order of society which occurs for restoration to original condition (*restitutio in integrum*).

5. With regard to the Petitioner's expert Abdul Hakim Garuda Nusantara, who in outline is of the opinion that Article 94 paragraph (7) of the Law *a quo* grants authority to the minister or a designated immigration officer to include the identity of the person subject to the decision of travel ban on the list of travel ban through immigration management information system. However, the aforementioned legal authority granted by the Law *a quo* to the minister or a designated immigration officer is potentially abused or abusive, so that it results in violation of human rights of the banned person. Article 97 paragraph (1) of the Law *a quo* opens up the opportunity for the aforementioned abuse of

legal authority which directly results in the banned person being held in domestic detention for an uncertain period, without being charged by any clear and justifiable legal accusation. It means that the person, whose travel ban is continuously extended, is held in a preventive detention without any legal certainty and the expert stated that the substance of the travel ban would be more appropriate to be included in the National Security Law.

With regard to the aforementioned expert statement, the Government may convey the following matters:

- a. Whereas the expert's view that the substance of the travel ban shall be more appropriate to be included in the National Security Law might be admissible although it is not yet entirely reasonable. Why? There is one fundamental question, namely if the substance of the travel ban is included in the National Security Law, then who will impose travel ban? Is it possible that a person is assumed to be banned when he leaves a house, city, or certain area. It is certainly very different from the universal and international custom, that the context of travel ban is the context of

banning a person from leaving a country. Hence, the context of travel ban constitutes a part of Immigration of a state, which is substantially applicable in universal and international terms. It certainly may not be comparable to the meaning of preventive detention. Therefore, the Government is not of the same opinion that the substance of the travel ban is included to be a part of the National Security Law, since the officers imposing a travel ban on a person from travelling abroad are certainly regulated in the law regulating the matters concerning persons entering or leaving the Indonesian territory, which in this case is the Law concerning Immigration.

- b. Whereas the Government is not of the same opinion as the expert's view on Article 97 paragraph (2) of the Law *a quo*, which is considered to cause new arbitrariness, because the grounds of the authorized officer for stipulating a written decision concerning travel ban are restricted by the provision of laws and regulations serving as the grounds for stipulating the aforementioned decision on travel ban. For example, in relation to the process of criminal judicature, both

the investigator and the prosecutor who may request for the imposition of travel ban shall be bound by the provision of the Criminal Procedure Code. In other words, Article 97 paragraph (1) of the Law *a quo* in fact restricts the government's authority, which cannot arbitrarily impose travel ban on a person from leaving Indonesia without any valid reason and legal limitation.

6. With regard to the Petitioner's expert Ildhal Kasim, who in outline is of the opinion that Article 97 paragraph (1) of the Law *a quo* is evidently and completely inconsistent with the protection of the right to move freely or freedom of movement. And if there is no clear regulation on this right, we may lead to a form of preventive detention and this is evidently a violation of human rights.

With regard to the aforementioned expert statement, the Government may convey the following matters:

- a. whereas in the Government's opinion, the regulation on travel ban in the Immigration Law is clear enough, namely the authorized officer shall requests for travel ban, mechanism and requirement for requesting

travel ban, mechanism for filing objection to travel ban and period of travel ban imposition. So that travel ban is imposed for legally clear and rational reasons, among other things, the reason of national security, public order, and public interest.

- b. restriction on the right of every person to move freely and restriction on other human rights may be imposed provided that the restriction is not based on arbitrary action/conduct (*willekeur*) and abuse of authority (*de tournement de pouvoir*), and to fulfill fair demand based on the considerations of morality, religious value, security, and public order as specified in Article 28J paragraph (2) of the 1945 Constitution.
7. In addition to responding to the statements of experts and witnesses presented by the Petitioner, the Government will also respond to the Petitioner's assumption through the experts and witnesses, which compare the provision on travel ban in Law Number 9 Year 1992 on Immigration to the provision on travel ban in Law Number 6 Year 2011 on Immigration, as follows:

Whereas the restriction on travel ban period as conveyed by the witness in Law Number 9 Year 1992 concerning Immigration, which shall be for a maximum period of 6 (six) months and may be extended no more than 2 (two) times, respectively no more than 6 (six) months, thus it shall be 18 (eighteen) months in total, is true as provided for in Article 13 paragraph (1) of Law Number 9 Year 1992. However, it needs to be observed that the aforementioned provision provides for the travel ban period for cases related to immigration or state receivables, rather than criminal cases being handled by the Attorney General. The travel ban period as conveyed by the witnesses and experts with reference to Law Number 9 Year 1992, namely for a maximum period of 6 (six) months, and may be extended for no more than 6 (six) months for every extension with the total maximum extension period of 2 (two) years as provided for in Article 13 paragraph (3) is indeed true. However, it needs again to be observed that the aforementioned provision on travel ban period and the total travel ban period, which is no more than 2 (two) years, is given for travel bans requested by the Commander in Chief of the Armed Forces of the Republic Indonesia (Commander in Chief of the Indonesian National Army), for a reason related to the maintenance and enforcement of state security and defense as provided for in Law Number 20 Year 1982

and the amendment thereto in Law Number 1 Year 1988 (in other words, whereas the aforementioned restriction on travel ban period of no more than 2 (two) years does not include the restriction imposed by the Attorney General). In this case, the witnesses and experts have disregarded a normative fact that travel ban period for a criminal reason is related to the authority of the Attorney General's Office under Law Number 9 Year 1992 to be adjusted to the decision of the Attorney General. In terms of formulation, the aforementioned provision on travel ban as provided for in Article 13 paragraph (2) of Law Number 9 Year 1992 is evidently not limitative. Therefore, in Article 97 paragraph (1) of Law Number 6 Year 2011, this provision is even evidently restricted, namely for a maximum period of 6 (six) months with each maximum extension period of 6 (six) months. The experts and witnesses have failed to make enough observation on the limit on travel ban period, which basically already provides legal certainty and equal period for all lawsuits or cases serving as the reason for travel ban.

VI. CONCLUSIONS

Based on the above-mentioned explanations and argumentations, the Government requests Your Excellency Chief Justice/Panel of Justices of the Constitutional Court, who examines, hears and decides upon the petition for

review of Law Number 6 Year 2011 concerning Immigration against the 1945 Constitution of the State of the Republic of Indonesia, to pass the following decisions:

1. 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 ontvankelijk verklaard*);
2. To accept the Government's Statements in its entirety;

To declare that the provision of Article 97 paragraph (1) of Law Number 6 Year 2011 concerning Immigration, particularly the phrase "*and may be extended at any time for a maximum period of 6 (six) months*" is consistent with the provision of Article 1 paragraph (3), Article 28D paragraph (1), and Article 28E paragraph (1) of the 1945 Constitution of the State of the Republic of Indonesia.

[2.4] Considering with regard to the Petitioner's petition, the People's Legislative Assembly delivered its opening statement orally at the hearing on November 16, 2011, as well as delivered its undated written statement in November 2011, which was received at the Registrar's Office of the Constitutional Court on November 24, 2011, which substantially stated as follows:

A. THE PROVISION OF THE IMMIGRATION LAW BEING PETITIONED FOR REVIEW AGAINST THE 1945 CONSTITUTION OF THE STATE OF THE REPUBLIC OF INDONESIA

The Petitioner in his petition requests review of Article 97 paragraph (1) of the Immigration Law.

- **Article 97 paragraph (1) of the Immigration Law reads as follows:**

“The Travel Ban shall be applicable for a maximum period of 6 months and may be extended at any time for a maximum period of 6 months”.

B. CONSTITUTIONAL RIGHTS AND/OR AUTHORITY CONSIDERED BY THE PETITIONER AS HAVING BEEN IMPAIRED BY THE COMING INTO EFFECT OF THE IMMIGRATION LAW

The Petitioner in the petition *a quo* stated that his constitutional rights had been impaired and violated or at least there was a potential impairment which, pursuant to logical reasoning, could be assured of occurring by the coming into effect of Article 97 paragraph (1) of the Immigration Law, which in substance states as follow:

1. Whereas, in the Petitioner’s opinion, the norm contained in Article 97 paragraph (1) of the Law *a quo* grants authority to state administrators, among others, the Minister of Law and Human

Rights, the Minister of Finance, the Attorney General, the Chairperson of the Corruption Eradication Commission, and the Head of the National Narcotics Agency, to impose travel ban on a person from leaving the territory of the unitary state for a maximum period of 6 (six) months, and also the authority to extend the aforementioned travel ban period for a maximum period of 6 (six) months for each extension without any time limit on how many times it may be extended, so that in the Petitioner's opinion, the norm of the aforementioned Law *a quo* opens up the greatest opportunity for the state administrators to act arbitrarily, violate human rights and violate constitutional rights of citizens (*vide* the petition *a quo* page 9).

2. Whereas the Petitioner assumes that the norm contained in Article 97 paragraph (1) of the Law *a quo* has also denied the Petitioner's constitutional rights as a citizen to obtain the recognition, guarantee, protection, and legal certainty of just laws as provided for in Article 28D paragraph (1) of the 1945 Constitution, and in the Petitioner's opinion, the ban from leaving the territory of the state of the Republic of Indonesia without any limit on how many times it may be extended, is in substance the same as granting authority to impose travel ban on a person for life (*vide* petition *a quo* page 9).

3. Whereas, in the Petitioner's opinion, the act of travel ban as provided for in Articles 91 to 97 of the Law *a quo* is a mere administrative action granted to certain state administrators, and not at all an act of house or city arrest imposed on a suspect as provided for in Article 22 paragraph (1) of Law of the Criminal Procedure Code. In fact, the fate of the banned person is actually worse than the fate of a person charged with city arrest, because the person who is totally banned may not leave the territory of the unitary state of the Republic of Indonesia. While a person charged with city arrest may travel anywhere, including abroad, insofar as he reports to the law enforcer that arrests him (*vide* the petition *a quo* page 11).
4. Whereas, the Petitioner assumes that Article 97 paragraph (1) of the Law *a quo*, particularly the phrase **“and may be extended at any time for a maximum period of 6 (six) months”** is inconsistent with the constitutional state principle as provided for in Article 1 paragraph (3) of the 1945 Constitution because it opens up the opportunity for state administrators to act arbitrarily, the norm is inconsistent with the principles of recognition, guarantee, and equality before the law as provided for in Article 28D paragraph (1), as well as inconsistent with the right and freedom of every person to leave the territory of the unitary state of the Republic of

Indonesia, at any time he wishes as provided for in Article 28E paragraph (1) of the 1945 Constitution (*vide* the petition *a quo* page 14).

The Petitioner assumes that the provision of Article 97 paragraph (1) of the Immigration Law is inconsistent with Article 1 paragraph (3), Article 28D paragraph (1), and Article 28E paragraph (1) of the 1945 Constitution, which read as follows:

- **Article 1 paragraph (3) of the 1945 Constitution, which reads:**

“The State of Indonesia shall be a constitutional state.”

- **Article 28D paragraph (1) of the 1945 Constitution, which reads:**

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

- **Article 28E paragraph (1) of the 1945 Constitution, which reads:**

“Every person shall be free to embrace a religion and to worship in accordance with their religion, to choose education and teaching, to choose occupation, to choose citizenship, to choose residence in the state territory and to leave it, and shall have the right to return.”

C. STATEMENTS OF THE PEOPLE’S LEGISLATIVE ASSEMBLY OF THE
REPUBLIC OF INDONESIA

With regard to the Petitioner’s argument as described in the petition *a quo*, the People’s Legislative Assembly in giving its view first described legal standing, which could be explained as follows:

1. Legal Standing of the Petitioner

The qualification which has to be fulfilled by the Petitioner as a party has been provided for in the provision of Article 51 paragraph (1) of Law Number 24 Year 2003 concerning the Constitutional Court (hereinafter briefly referred to as the Constitutional Court Law), which states that “*The Petitioners shall be the party considering that his/her constitutional rights and/or authority are impaired by the coming into effect of a law, namely:*

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

d. *state institutions.*”

The constitutional rights and/or authority as intended in Article 51 paragraph (1) of the aforementioned Constitutional Court Law, are affirmed in its elucidation, that “*referred to as “constitutional rights” are the rights provided for in 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 only the rights explicitly provided for in the 1945 Constitution are classified as “constitutional rights”.

Therefore, pursuant the Constitutional Court Law, in order for a person or a party to be admitted as a Petitioner having legal standing in the petition for review of a law against the 1945 Constitution, he/she must first explain and substantiate that:

- a. His/her qualification as a Petitioner in the petition *a quo* as intended in Article 51 paragraph (1) of Law Number 24 Year 2003 concerning the Constitutional Court;
- b. His/her constitutional rights and/or authority as referred to in the “**Elucidation of Article 51 paragraph (1)**” which he/she considers to have been impaired by the coming into effect of a Law.

With regard to the parameters for constitutional impairment, the Constitutional Court has provided a definition and limitation of impairment of constitutional rights and/or authority by the coming into effect of Law, which has to meet 5 (five) requirements (*vide* Decision on Case Number 006/PUU-III/2005 and Case 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. whereas the aforementioned Petitioner's constitutional rights are considered to have been impaired by the Law being petitioned for review;
- c. whereas the impairment of the Petitioner's constitutional rights and/or authority is specific (special) 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 being petitioned for review;

- e. the possibility that with the granting of the petition, the argued impairment of such constitutional rights and/or authority will not or will no longer occur.

If the aforementioned five requirements are not satisfied by the Petitioner in the case of review of the law *a quo*, the Petitioner does not have the qualification of legal standing as a Petitioner.

With regard to the aforementioned legal standing, the People's Legislative Assembly leaves it entirely to the Justices to consider whether the Petitioner has legal standing as required in Article 51 paragraph (1) of the Constitutional Court Law and based on the Constitutional Court's Decision on Case Number 006/PUU-III/2005 and Case Number 011/PUU-V/2007.

2. Review of Article 97 paragraph (1) of Immigration Law

With regard to petition for review on Article 97 paragraph (1) of Immigration Law, the People's Legislative Assembly conveys the following statements:

1. Whereas, with regard to the Petitioner's petition, the People's Legislative Assembly needs to first explain the definition of travel ban pursuant to Article 1 sub-article 28 of the Law *a quo*, namely: "*a temporary ban on a person from*

leaving the Indonesian territory based on immigration reasons or other reasons specified by law”, and of reason for travel ban pursuant to Article 16 paragraph (1) subparagraph b of the Law *a quo* which reads: “*necessary for the interest of investigation and inquiry at the request of the authorized officer*”. And the definition of investigation pursuant to Article 1 sub-article 2 of Law in the Criminal Procedure Code is: “*a series of actions of the investigator on matters and in the manner set forth in this law to seek as well as collect evidence, with which it will clarify the criminal act occurred and for the purpose of finding the suspect*”. Therefore, from legal aspect, travel ban is temporary and is imposed for the mere interest of due process of law in order to facilitate the substantiation of a criminal act.

2. Whereas the unitary state of the Republic of Indonesia as a constitutional state is expressly stated in Article 1 paragraph (3) of the 1945 Constitution. The drafters of the 1945 Constitution state that the state of the Republic of Indonesia is a state which is based on law (*rechtsstaat*), not based on mere power (*machtsstaat*). It means that the administration of government is based on law, rather than power. Law

within the positive definition is in the form of written law, which consists of:

- a. The 1945 Constitution
- b. Stipulation of the People's Consultative Assembly;
- c. Law/Government Regulation in lieu of Law;
- d. Government Regulation;
- e. Presidential Regulation; and
- f. Regional Regulation.

Article 97 paragraph (1) of the Law *a quo* is included in the category of written law among the laws made by the drafters of law, namely the People's Legislative Assembly and the President. Article 97 paragraph (1) of the Law *a quo* by the drafters of Law normatively grants authority to the immigration authority to impose temporary travel ban on a person allegedly committing a criminal act for the purpose of uninterrupted investigation process or due process of law. The provision of Article 97 paragraph (1) of the Law *a quo* grants authority to the Immigration Authority to impose temporary travel ban, namely during an investigation and

inquiry process on a person from leaving the territory of the unitary state of the Republic of Indonesia. The aforementioned travel ban, as seen from the word “temporary”, is not permanent or continuous as the term given by the Petitioner, namely for life, although the travel ban may be extended “at any time” for 6 (six) months but normatively there is a limitation that it shall be extended within the period of the investigation process.

3. With regard to the Petitioner’s opinion which states that Article 97 paragraph (1) of the Law *a quo* has caused arbitrary action by the officer issuing the travel ban, the People’s Legislative Assembly is not of the same opinion as the Petitioner, Article 97 paragraph (1) of the Law *a quo* normatively grants authority to impose travel ban, including to extend the period of travel ban on a person from travelling outside the territory of the unitary state of the Republic of Indonesia. It is a choice of policy or legal policy of the drafters of the Law in the context of facilitating and smoothening the investigation and inquiry process or due process of law. Hence, there are no adequate grounds for declaring that the provision of Article 97 paragraph (1) of the Law *a quo* does not have any legal certainty, because the

provision is applicable to every person allegedly committing a criminal act, and due to the aforementioned criminal act as well as for the purpose of investigation and inquiry process, travel ban may be imposed on such person, and this travel ban shall be temporarily applicable, which is during the period of investigation and inquiry process. In the event that court decision acquits such person of the case serving as the reason for travel ban, then the travel ban shall be expired by the operation of law.

4. Regarding the Petitioner's argumentation which relates it to the decision of discharge upon the case of Prof. Romli Atmasasmita, in the opinion of the People's Legislative Assembly, it does not constitute the issue of constitutional review of a norm, but rather the issue of applicability of a norm.

Hence the statements of the People's Legislative Assembly were conveyed for the considerations for Your Excellency Panel of Justices of the Constitutional Court to examine, hear, and decide upon the case *a quo*, as well as to pass the following decisions:

1. To accept the statements of the People's Legislative Assembly in its entirety;

2. To declare that the provision of Article 97 paragraph (1) of the Law *a quo* **is consistent** with the provision of Article 1 paragraph (3), Article 28D paragraph (1), and Article 28E paragraph (1) of the 1945 Constitution.
3. To declare that the provision of Article 97 paragraph (1) of the Law *a quo* have binding legal force;

[2.5] Considering whereas the Petitioner and the Government had conveyed a written conclusion, which was respectively received at the Registrar's Office of the Court on November 30, 2011, which substantially stated that they shall remained firm with their standpoints;

[2.6] Considering whereas in order to shorten the description in this decision, all matters occurred at the hearing shall be sufficiently referred in the minutes of hearing, which constitutes an inseparable part of this decision.

3. LEGAL CONSIDERATIONS

[3.1] Whereas the purpose and objective of the Petitioner's petition are to review the constitutionality of Article 97 paragraph (1) of Law Number 6 Year 2011 concerning Immigration (State Gazette of the Republic of Indonesia Year 2011 Number 52, Supplement to the State Gazette of the Republic of Indonesia Number 5216, hereinafter referred to as Law 6/2011) against Article 1 paragraph

(3), Article 28D paragraph (1), and Article 28E paragraph (1) of the 1945 Constitution of the State of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution);

[3.2] Whereas before examining the substance of the petition, the Constitutional Court (hereinafter referred to as the Court) shall first consider as follows:

- a. Authority of the Court to hear the petition *a quo*;
- b. Legal standing of the Petitioner to file the petition *a quo*;

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

Authority of the Court

[3.3] Considering whereas based on Article 24C paragraph (1) of the 1945 Constitution, Article 10 paragraph (1) sub-paragraph a of the Constitutional Court Law 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 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 constitutional authorities is to hear constitutional cases at the first and final levels, the decision of which shall be final in nature, in order to conduct review of a Law against the 1945 Constitution;

[3.4] Whereas the Petitioners' petition is to review the constitutionality of the norm of a phrase in Article 97 paragraph (1) of Law 6/2011 against the 1945 Constitution, which constitutes one of the Court's authorities, therefore the Court shall be authorized to examine, hear and decide upon 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 eligible to file a petition for review of a Law against the 1945 Constitution shall be those considering 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 groups of people having a common interest);
- b. customary law community groups insofar as they are still in existence and in line with the development of the communities 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 substantiate:

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

[3.6] Whereas, following the issuance of Decision of the Constitutional Court Number 006/PUU-III/2005 dated May 31, 2005 and the 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 such constitutional rights and/or authority have been impaired by the coming into effect of the Law petitioned for review;
- c. the impairment of such constitutional rights and/or authority must be specific and actual or at least potential in nature which, pursuant to logical reasoning, can be assured of occurring;
- d. there is a causal relationship (*causal verband*) between such impairment of constitutional rights and/or authority and Law petitioned for review;
- e. the possibility that with the granting of the Petitioner's petition, the argued impairment of such 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;

[3.8] Considering whereas in substance the Petitioner claims himself to be an individual Indonesian citizen who at the time this petition was filed, was subject to a period extension of travel ban from leaving the territory of the Unitary State of the Republic of Indonesia for 6 (six) months by virtue of the Attorney General's

Decision Number Kep-201/D/Dsp.3/06/ 2011 dated June 27, 2011, for the reason of “for the purpose of legal operations in the context of investigation”. This travel ban is an extension of the previous decision on travel ban to which the Petitioner was subject by virtue of the Attorney General’s Decision Number Kep-212/D/Dsp.3/06/2010 dated June 25, 2010, which was effective for 1 (one) year. The extension of this travel ban period was based on the provision of Article 97 paragraph (1) of Law 6/2011. In the Petitioner’s opinion, his constitutional rights, namely the right to the recognition, guarantee, protection, and legal certainty of just laws as well as the right to choose residence in the state territory and to leave it, and shall have the right to return, which is guaranteed by the constitution, have been impaired by the existence of the provision of Article 97 paragraph (1) of the Law *a quo*, which permits the Minister of Law and Human Rights to extend the Petitioner’s travel ban period upon the request of the Attorney General without any limitation, for the reason of investigation purpose. It had caused the Petitioner to lose his right to travel to other countries during the aforementioned travel ban period without any certainty of when the travel ban period would end. Based on the aforementioned arguments, in the Court’s opinion, there had been a constitutional impairment of the right experienced by the Petitioner by the existence of the provision of Article 97 paragraph (1) of the Law *a quo*, therefore the Petitioner has legal standing to file the petition *a quo*.

[3.9] Considering whereas since the Court has authority to examine, hear, and decide upon the petition *a quo*, and the Petitioner has legal standing, then the Court shall consider the substance of the petition;

The Opinion of the Court

The Substance of the Petition

[3.10] Considering whereas the substance of the Petitioner's petition is the review of the constitutionality of Article 97 paragraph (1) of Law 6/2011 which reads, "*The Travel Ban shall be applicable for a maximum period of 6 months and may be extended at any time for a maximum period of 6 months*", to the extent of the phrase "*and may be extended at any time for a maximum period of 6 months*". In the Petitioner's opinion, the aforementioned phrase may allow the prolongation of travel ban on a citizen from travelling abroad during the investigation period without any certain time limit, thus creating legal uncertainty which is inconsistent with Article 28D paragraph (1) of the 1945 Constitution, and violates the citizen's right to choose residence in the state territory and leave it, and shall have the right to return, which is guaranteed by Article 28E paragraph (1) of the 1945 Constitution;

[3.11] Considering whereas to substantiate his arguments, the Petitioner presented exhibits P-1 through P-13 and presented experts and witnesses,

whose statements were heard at the hearing, which in substance explained the following:

1. Prof. Dr. Hafid Abas

Article 97 paragraph (1) of Law 6/2011 granting authority to several state administrators to impose travel ban on a person from travelling abroad by extending it every six months without any limitation is a form of violation of the citizen's right to obtain the recognition, guarantee, protection, and legal certainty of just laws as provided for in Article 28D paragraph (1) of the 1945 Constitution.

2. Prof. Dr. H.M. Tahir Azhary

Article 97 paragraph (1) of Law 6/2011 is inconsistent and not in accordance with the provision of Article 1 paragraph (3), Article 28D paragraph (1), and Article 28E paragraph (1) of the 1945 Constitution. The aforementioned travel ban which may be extended for many times without any limitation reflects an authoritarian legal politics which are inconsistent with the 1945 Constitution, the principle of justice and equality before the law, as well as recognition and protection of universal human rights.

3. Ifdhal Kasim, S.H., LL.M.

Travel ban constitutes a restriction on the freedom of movement which is justified on the basis of public interest, however provided that this restriction must be stated in a Law, in line with other rights recognized by the covenant (ICCPR), meet one of the intervention purposes stated in the provision, and last, necessary and proportional in a democratic society. The phrase “*and may be extended at any time for a maximum period of 6 months*” in the norm *a quo* may be interpreted excessively by the state administrators granted authority by the Law *a quo* to impose travel ban, so that the provision is inconsistent with the constitutional rights provided for in the 1945 Constitution;

4. Dr. Abdul Hakim Garuda Nusantara

The legal authority granted by the Law *a quo* to the minister or immigration officers is potentially abused or abusive, which results in the violation of Human Rights of the person subject to the travel ban. The formulation of Article 97 paragraph (1) of Law 6/2011 opens up the opportunity for immigration officers or authority to continuously, once every six months, extend the travel ban period which causes the persons subject to the travel ban to be in a state of legal uncertainty which may affect his future;

5. Witness Dr. A.M. Fatwa

The witness explained about the event that he experienced himself when he was banned without any time limit and travel ban letter in the New Order government era, which was very painful and had denied the witness' human rights as a citizen;

6. Witness Fahri Hamzah

The witness explained about the event that he experienced while he was holding the position of the Head of the Working Committee for the Discussion of the Immigration Law. During the discussion, according to the witness, the Working Committee focused itself not to grant much discretion to state administrators, including in the case of travel ban;

[3.12] Considering whereas the Court has heard oral statements and read written statements of the Government and the People's Legislative Assembly, which in substance state that Article 97 paragraph (1) of Law 6/2011 has provided legal certainty and has been in line with the mandate of the constitution, hence it is consistent with the 1945 Constitution, particularly Article 1 paragraph (3), Article 28D paragraph (1), and Article 28E paragraph (1) of the 1945 Constitution, as well as not impairing the Petitioner's constitutional rights and/or authority;

Whereas based on the aforementioned matters, the Court considers as follows:

[3.13] Considering whereas travel ban from travelling abroad is provided for by Law 6/2011, namely in Articles 91 up to 97. In the general provision of Article 1 sub-article 28 of the Law *a quo*, it is explained that “*Travel ban is a temporary ban on a person from leaving the Indonesian Territory based on immigration reasons or other reasons specified by law*”. Article 91 of Law 6/2011 states that the party having authority to impose travel ban is the Minister, in this case the Minister of Law and Human Rights (hereinafter referred to as the Minister of Law and Human Rights). Travel ban is imposed based on supervision result of the Immigration Authority, Decree of the Minister of Finance and the Attorney General, request of the Chief of the National Police of the Republic of Indonesia, order from the Chairperson of the Corruption Eradication Commission, request of the Head of National Narcotics Agency, and decision, order, or request of the heads of other ministries/institutions, who have authority of travel ban based on Law. Article 16 paragraph (1) of Law 6/2011 states that if a person is on the travel ban list, or needed for the interest of inquiry upon the request from an authorized officer, then the Immigration Officer may prevent the person from leaving the Indonesian Territory. Hence, one of the purposes of travel ban is for the interest of inquiry, namely to prevent a person allegedly committing a criminal act from avoiding the due process of law by escaping to outside of the

Indonesian territory. Inquiry is a series of actions by the investigator on matters and in the manner provided for under this Law to seek as well as collect evidence, which will shed light on the criminal act committed and for the purpose of finding the suspect (*vide* Article 1 sub-article 2 of the Criminal Procedure Code);

[3.14] Considering whereas Article 28E paragraph (1) of the 1945 Constitution states, “*Every person is free to embrace a religion and to worship in accordance with their religion, to choose education and teaching, to choose occupation, to choose citizenship, to choose residence in the state territory and to leave it, and shall have the right to return.*” Based on the aforementioned provision, the constitution guarantees the right and freedom of every person to choose his residence in the state territory and leave it, and shall have the right to return. The aforementioned right is also guaranteed in the norm of universal human rights namely in the International Covenant on Civil and Political Rights (ICCPR), which has been ratified by Indonesia under Law Number 12 Year 2005 concerning the Ratification of the International Covenant on Civil and Political Rights. Article 12 of the Covenant reads: “1.) *Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence, 2.) Everyone shall be free to leave any Country, including his own, 3.) The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of*

others, and are consistent with the other rights recognized in the present Covenant, 4.) No person shall be arbitrarily deprived of the right to enter his own country”;

[3.15] Considering whereas pursuant to the 1945 Constitution, the right to leave the state territory which is guaranteed by the constitution as well as the norm of universal Human Rights may be restricted in certain cases, as provided for in Article 28J paragraph (2) of the 1945 Constitution which states, *“In exercising their right and freedom, every person must submit to the restrictions stipulated in laws and regulations with the sole purpose to guarantee the recognition of and the respect for other people's rights and freedom and fulfill fair demand in accordance with the considerations of morality, religious values, security, and public order in a democratic society.”* Article 12 paragraph (3) of ICCPR also opens up the possibility for restriction on citizen’s right to leave the territory of his country, namely insofar as it is provided for by law and for the purpose of protecting national security, public order, public health or morality or the rights and freedom of others, and is consistent with other rights recognized in the covenant;

[3.16] Considering whereas in the Court’s opinion, travel ban from travelling abroad is one of the forms of restriction on citizen’s constitutional rights which are justifiable according to the constitution insofar as the restriction on such rights is provided for by law for the sole purpose of guaranteeing the recognition, as well

as respect for the rights and freedom of other people, and of fulfilling fair demand in accordance with the considerations of morality, religious value, security, and public order in a democratic society [*vide* Article 28J paragraph (2) of the 1945 Constitution]. Travel Ban must be imposed through a due process of law. On such basis, the state may impose a restriction by diminishing a person's freedom to travel to other countries, among other things, for the interest of an inquiry of a criminal case so that the inquiry process can be conducted uninterruptedly without any obstacle. It would be difficult to carry out an inquiry process, if a person whose information is required is outside of the national legal jurisdiction of Indonesia. In addition, the restriction on citizen's rights must be conducted proportionally and must avoid granting of excessive discretion to the state, in this case the law enforcement apparatus. Excessive discretion in restricting every person's human rights may lead to arbitrary action by the state towards the citizens. Also, the rights of a person who is subject to travel ban from travelling abroad for the interest of inquiry, must always be protected by the state in order to continuously obtain the guarantee of protection and legal certainty of just laws as one of the human rights guaranteed by the constitution [*vide* Article 28D paragraph (1) of the 1945 Constitution]. The restriction on a suspect from travelling abroad has in fact the same substance as the city arrest system adopted in the Criminal Procedure Code, namely in the form of detention imposed on the suspect not to leave a city during detention period. The suspect/accused is compulsory to report themselves at a specified time to

investigator [*vide* Article 22 paragraph (3) of the Criminal Procedure Code] for a purpose which is more or less the same as those of travel ban in Law 6/2011. The difference is that in the case of city arrest, the punishment may be reduced if the suspect/accused is eventually decided to be imprisoned, while travel ban from travelling abroad does not reduce the punishment. The absence of compensation or reduction of punishment based on the length of travel ban period imposed on a citizen may become an excessive additional punishment for the citizen, because before a verdict is announced, the suspect/accused has been impaired in the first place by the travel ban from travelling abroad which affects his life;

[3.17] Considering, in the Court's opinion, that on one hand travel ban from travelling abroad without any certain time limit as provided for in Article 97 paragraph (1) of Law 6/2011, particularly the phrase "*and may be extended at any time for a maximum period of 6 months*" may result in legal uncertainty for the suspect since he/she cannot be ensured when the investigation will end and when the travel ban from travelling abroad will end. On the other hand, it may lead to the arbitrary action by state apparatus, namely the Attorney General, the Minister of Law and Human Rights, and other officers having authority to impose travel ban on the suspect without any time limit. The subsequent result is the uncertainty in the settlement of a criminal case, which even impairs the enforcement of justice, because justice delayed may result in injustice (justice delayed is justice denied). Moreover, travel ban from travelling abroad on a

suspect without any time limit, will result in captivity of a suspect for an unlimited time, without getting any reduction of punishment if the suspect is eventually sentenced by the court as the case for a suspect/an accused being subject to city arrest as provided for in the Criminal Procedure Code. Such matter, in the Court's opinion, will result in injustice for a suspect being subject to travel ban from travelling abroad without any certain time limit. Travel ban from travelling abroad constitutes a restriction on a person's constitutional right to "leave the state territory" guaranteed by Article 28E paragraph (1) of the 1945 Constitution. Insofar as the aforementioned extension of travel ban is restricted by and based on justice and legal certainty, Article 97 paragraph (1) of Law 6/2011 is consistent with the constitution. However, since the extension of travel ban from travelling abroad provided for by Article 97 paragraph (1) of Law 6/2011, as proved in the phrase "*and may be extended at any time for a maximum period of 6 months*", may result in the prolongation of travel ban from travelling aboard without any time limit, so that it results in legal uncertainty which means that it is inconsistent with the 1945 Constitution;

[3.18] Considering whereas based on all the foregoing considerations, the Court is of the opinion that the Petitioner's petition, particularly regarding the phrase "*at any time*" in Article 97 paragraph (1) of Law 6/2011 is legal founded;

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 examine, hear, and decide upon the petition *a quo*;

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

[4.3] The substance of the Petition is legally founded in part.

Based on the 1945 Constitution of the State of the Republic of Indonesia, 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), and Law Number 48 Year 2009 regarding Judicial Power (State Gazette of the Republic of Indonesia Year 2009 Number 157, Supplement to the State Gazette of the Republic of Indonesia Number 5076);

5. INJUNCTION OF DECISIONS

Passing the Decision,

To declare:

- To grant the Petitioner's petition in part;

- Article 97 paragraph (1) of Law Number 6 Year 2011 concerning Immigration (State Gazette of the Republic of Indonesia Year 2011 Number 52, Supplement to the State Gazette of the Republic of Indonesia Number 5216), to the extent of the phrase “at any time” is inconsistent with the 1945 Constitution of the State of the Republic of Indonesia;
- Article 97 paragraph (1) of Law Number 6 Year 2011 concerning Immigration (State Gazette of the Republic of Indonesia Year 2011 Number 52, Supplement to the State Gazette of the Republic of Indonesia Number 5216), to the extent of the phrase “at any time” has no binding legal force;
- Article 97 paragraph (1) of Law Number 6 Year 2011 concerning Immigration (State Gazette of the Republic of Indonesia Year 2011 Number 52, Supplement to the State Gazette of the Republic of Indonesia Number 5216), becomes “The Travel ban shall be applicable for a maximum period of 6 months and may be extended for a maximum period of 6 months”;
- To order the promulgation of this decision in the Official Gazette of the Republic of Indonesia;

- To reject the other and the remaining parts of the Petitioner's petition;

Hence this decision was made in the Consultative Meeting of Justices attended by nine Constitutional Court Justices, namely by us, Moh. Mahfud MD as the Chief Justice and concurrent Member, Achmad Sodiki, Hamdan Zoelva, Anwar Usman, M. Akil Mochtar, Maria Farida Indrati, Muhammad Alim, Harjono, and Ahmad Fadil Sumadi, respectively as Members, on **Wednesday, the thirteenth of June two thousand and twelve**, and was pronounced in the plenary session of the Constitutional Court which was open for the public on **Wednesday, the twentieth of June two thousand and twelve**, by eight Constitutional Court Justices, namely by us, Moh. Mahfud MD as the Chief Justice and concurrent Member, Achmad Sodiki, Hamdan Zoelva, Anwar Usman, M. Akil Mochtar, Muhammad Alim, Harjono, and Ahmad Fadil Sumadi, respectively as Members, assisted by Ery Satria Pamungkas as the Substitute Registrar, in the presence of the Petitioner or his representative, the Government or its representative, the People's Legislative Assembly or its representative.

CHIEF JUSTICE,

Sgd.

Moh. Mahfud MD.

JUSTICES,

Sgd.

Achmad Sodiki

Sgd.

Hamdan Zoelva

Sgd.

Anwar Usman

Sgd.

M. Akil Mochtar

Sgd.

Muhammad Alim

Sgd.

Harjono

Sgd.

Ahmad Fadil Sumadi

SUBSTITUTE REGISTRAR,

Sgd.

Ery Satria Pamungkas