



## Case 57/PUU-VIII/2010

**Country:** Indonesia

**Region:** Asia

**Year:** 2011

**Court:** Constitutional Court

**Health Topics:** Health care and health services, Health information, Health systems and financing, Hospitals, Poverty

**Human Rights:** Freedom from discrimination, Right to a clean environment, Right to health, Right to housing, Right to life, Right to social security, Right to work

### Facts

On April 3, 2010, the Indonesian Government filed the Budget Amendment Bill of 2010 in Parliament. On May 3, 2010, a Plenary Session of the House of Representatives passed an amendment to the National Budget entitled Law No. 2 of 2010 Concerning the Amendment to Law No. 47 of 2009 Regarding the National Budget for the 2010 Financial Year (Law No. 2). Law No. 2 outlined amendments to the 2010 Budget, which resulted in only 2.13% of the National Budget being allocated to Health expenditure.

The action was brought by 6 Indonesian NGOs seeking to declare the operation of Law No. 2 constitutionally invalid.

They argued that the Law was unconstitutional as against the following Constitutional provisions:

Article 18A(2) - concerning the financial relationship between the central government and the regional authorities;

Article 23(1) - mandating that the enactment of laws are to be for the overall prosperity and welfare of the people;

Article 28D(1) - mandating the right of each citizen to legal certainty;

Article 28H(1) - mandating the right of all people to receive medical care from the State;

Articles 34(2) and (3) - mandating the right of the poor and weak to social security and the obligation of the State to provide sufficient medical facilities.

The Plaintiffs focused in particular on the fact that the national health law, Law No. 36 of 2009 Concerning Health, mandated that 5% of the National Budget was to be spent on health services, while Law No. 2 only provided for expenditure of 2.13%. The Plaintiffs argued that this contradiction created legal uncertainty contrary to Article 28D(1), contravened Article 23(1) because it was unfavourable to the overall prosperity and welfare of the people of Indonesia, and contravened Articles 28H(1), 34(2), and 34(3) by calling into question the ability of the State to provide health care and social security. They further contended that Law No. 2 violated Article 18A(2) of the Constitution, because the amount of health funding provided to each region was not proportionate to the levels of poverty and the fiscal capacity of each region.

### Decision and Reasoning

The Constitutional Court declined to hear the case, as the relevant budget had been amended by the time the case arrived before the Court. However, before the repeal of the impugned budget, the Court had held several hearings to discuss the substance of the Plaintiffs' arguments. These arguments and the responses to them by the State are reproduced within the Court's judgment, although no ruling has been made on their merits.

### Decision Excerpts

Based on the above, Law Number 2 of 2010 Concerning the Amendment of Law Number 47 of 2009 Regarding the National Budget of the 2010 Financial Year, being the object of the petition of the Plaintiffs is no longer valid and has no power from January 1, 2011. Considering that the object of the petition as contemplated in paragraph [3.7] above does not apply and no longer has holding capacity, the legal standing and the main petition of the Plaintiffs shall not be considered further. [Page 29-30]

