Case 43/PUU-IX/2011

Country: Indonesia
Region: Asia
Year: 2011
Court: Constitutional Court
Health Topics: Health information, Tobacco
Human Rights: Freedom from discrimination, Right to health, Right to social security

Facts

The Plaintiffs challenged Indonesian legislative provisions regulating health warnings on cigarette packaging.

The impugned provision, Article 114 of Law No. 36 of 2009 Concerning Health (the Law), required health warnings on all cigarette packaging. The Explanation Provision in the legislation defined such a health warning as one that was easily readable, and one that â€œmayâ€• be accompanied by pictures or other media. The Plaintiffs argued that this was inconsistent with Article 199(1) of the Law, which imposed a prison sentence or fine on manufacturers and importers who failed to include any form of health warning in line with Article 114.

In the Plaintiffâ€™s view, such inconsistencies led to uncertainty in the law and watered down the intended effect of the law. The provisions therefore violated the constitutional right to legal certainty and equality before the law in Article 28D(1) of the Constitution. The Plaintiffs argued that the provision should instead be interpreted as requiring a mandatory health warning

Decision and Reasoning

The Court declared the application ne bis in idem, as the same issue had already been examined in the case No. 34/PUU-VIII/2010, which found in favour of the plaintiffâ€™s arguments.

Decision Excerpts

â€œIndonesia is expected to become the 5th ASEAN country after Singapore, Thailand, Brunei, and Malaysia in implementing picture health warnings on cigarette packs, and the third country after Thailand and India in the SEARO region of WHOâ€• Page 14 (Petitionerâ€™s arguments)

â€œThe phrase "mandatory health warning" in the provisions of Article 114 of the Law should be interpreted as a mandatory health warning in clear and easily legible writing to be accompanied by pictures or other forms thereofâ€• Page 22 (Petitionerâ€™s arguments)