



Case 55/PUU-IX/2011

Decision No. 55/PUU-IX/2011

Country: Indonesia

Region: Asia

Year: 2012

Court: Constitutional Court [Mahkamah Konstitusi]

Health Topics: Health information, Tobacco

Human Rights: Right of access to information

Facts

The applicants, three individuals representing companies in the clove cigarette industry, alleged that the Government's requirements for pictorial and written health warnings on cigarette packaging violated their rights under the 1945 Constitution (the "Constitution").

Article 114 of Law Number 36 of 2009 Concerning Health (the "Health Act") classified nicotine as an addictive substance of tobacco, set regulations for the production of cigarettes and imposed significant criminal penalties for any infractions. The applicants specifically addressed the regulation that required written and pictorial warnings on cigarette packaging attesting to the dangers of smoking. The applicants claimed that the dangers of smoking were not well-established and that the warning requirement was one-sided, allowing them to add only negative information to packaging. The applicants also claimed that the increased burden on the production of cigarettes would force small producers in Indonesia out of business. The increased production costs would reduce employment rates as producers would have less money to hire laborers, or the inability to hire laborers at all if the company went out of business. The applicants also complained of provisions in 199(1) of the Health Act, which imposed criminal sanctions for infractions. The applicants alleged that the penalties should be administrative in nature, not criminal, as criminal sanctions should only be used as a last resort. The applicants also complained that both the additional requirements and the criminal penalties were discriminatory as both applied only to cigarettes and not to other products that posed a risk to health, such as alcoholic beverages.

The applicants alleged that the laws under the Health Act violated their rights under the following provisions of the Constitution:

Article 27(2): regarding the right to work and live in a humane manner

Article 28D(1): regarding the right to "recognition, security, protection and legal certainty of fair and equal treatment before the law"

Article 28G(1): regarding the right to protection from threat

Article 28F: regarding the right to "possess, store, process and convey information by employing all available channels"

Article 28I(2): regarding freedom from discrimination

Decision and Reasoning

The Court held that the applicants' case could not be accepted.

Although the Court determined that it had authority to hear the case and that the applicants had established legal standing, it held that the case could not be accepted as it was *ne bis in idem*. Article 60 of the Law of the Constitutional Court provided that the Court could not review content or sections of an act that have already been reviewed by the Court. The articles of the Health Act that the applicants claimed were unconstitutional had already been reviewed by the Court and held constitutional in Court decision 34/PUU-VII/2010. The Court noted that the earlier ruling found that the requirement for warnings on packaging satisfied the right of citizens under the Article 28F of the Constitution to obtain information.

Decision Excerpts

"[3.14] Mandatory written and pictorial health warning signs, in addition to other forms of warning, will further

ensure the fulfillment of the constitutional rights of citizens of Indonesia, especially the rights of consumers and/or potential consumers of cigarettes to obtain information regarding the dangers of smoking, as consumers and/or prospective consumers, consisting of the part of the community which has the ability to read and write, and also consisting of those who cannot or do not have the ability to read and write. Even for those who suffer physical disabilities, such as blindness, health warning information is also required, and can be accounted for in the phrase "other forms", for example by using braille" (quoting Court decision 34/PUU-VIII/2010).

[3.14] Bahwa dengan diwajibkannya mencantumkan peringatan kesehatan dengan tanda gambar atau bentuk lainnya, akan semakin menjamin terpenuhinya hak-hak konstitusional warga negara Indonesia khususnya para konsumen dan/atau calon konsumen rokok untuk memperoleh informasi tentang bahaya merokok, karena para konsumen dan/atau calon konsumen, selain terdiri atas masyarakat yang memiliki kemampuan baca-tulis, juga terdiri atas mereka yang tidak atau belum memiliki kemampuan baca-tulis. Bahkan bagi mereka yang mengalami cacat fisik tertentu seperti kebutaan memerlukan informasi peringatan kesehatan tersebut sehingga peringatan dapat juga ditambah dalam bentuk lainnya, misalnya dengan menggunakan huruf braille" (mengutip 34/PUU-VIII/2010).

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