Directory of the Supreme Court of the Republic of Indonesia

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JUDGEMENT
No. 2975 K/Pdt/2009
FOR JUSTICE IN ACCORDANCE WITH GOD ALMIGHTY
SUPREME COURT

The examination of this civil appeal in cassation has been decided as follows:

1. Government of the Republic of Indonesia represented by, the Minister of Health of the Republic of Indonesia, HR. Rasuna Said Street, Block X-5 Kav. 4 – 9, South Jakarta, in this case endorsing V.A. Binus Malik, SH., MH., Tyaswening K, SH., MH., Bonar Sianturi, SH., MH., Rahmat, SH., Novica Mutiara R, SH., Leo Simaremare, SH., Hanum Laelatusyifa, SH., having its office in HR. Rasuna Said Street, Block X-5 Kav. 4 – 9, South Jakarta, the Cassation Petitioner was originally Appellant I and Defendant III;
2. Bogor Agricultural Institute, Darmaga Street, IPB Darmaga Campus 16680 Bogor, West Java, in this case endorsing Tawheed Dedy Mohamad, SH., MH and Widodo Bayu Ajie, SH., having its office in the Andi Hakim Nasution Building, Bogor Agricultural Institute, the Cassation Petitioner was originally Appellant II and Defendant I:
3. The Food and Drug Administration Watchdog, located at National Press Road No. 23, Central Jakarta, in this case endorsing Hendri Siswandii Inimemberi, SH, Ade Atman Harahap, SH., MH., Adam PWA Wibowo, SH., Tiodora Sirait, SH., MH., Lesmeria Sirait, SH., MH., Irawan Naning, SH., MH., Sugeng Riyanto, SH., Fahmi Reza, SH., and the legal and public relations staff of the Food and Drug Administration Watchdog of the Republic of Indonesia, having its office in Percetakan Negara Street No. 23, Central Jakarta, the Cassation Petitioner was originally Defendant II/ Appellant II;

Against:

1. David M.L Tobing, SH., M. Kn, residing at Penegak Street No. 6, RT. 10/ RW. 02, Palmeriam District, Matraman Sub-District, East Jakarta, the Respondent to the Appeal in Cassation was previously the Plaintiff /Respondent;

Matter: 1 of 30 matters. Decision Number: 2975 K/Pdt/2009

This Supreme Court;

Having read the relevant submissions to the court:

Considering from these submissions that the Respondent to this Appeal in Cassation was originally the Plaintiff in the hearing at first instance and the Cassation Petitioners were originally Defendants I, II, III and Appellants I, II, III. The Central Jakarta District Court heard the case primarily on the following arguments:

I. AUTHORITY TO HEAR THE MATTER

1. That this lawsuit was filed with the Central Jakarta District Court on the following basis:

Article 118 (2) HIR, which states:

"If there is more than one defendant, and these defendants reside in different locations and therefore, legal jurisdictions, then the plaintiff may elect to file in the jurisdiction of one of the defendants. This election must be communicated to the Chief Judge of the District Court";

Under these provisions, the Plaintiff is entitled to file a lawsuit within the jurisdiction of the Central Jakarta District Court because one of the parties, that is Defendant II, is domiciled within the jurisdiction of this court;

II. THE PLAINTIFF'S LEGAL POSITION / LEGAL STANDING

2. That the Plaintiff is an Advocate in the office of Adams & Co., Counsellors At Law, located at Wisma Bumiputera Fl. 15, J1. Jend. Sudirman Kav. 75, South Jakarta;
3. That as a citizen of the Republic of Indonesia, domiciled in Jakarta, the Plaintiff has guaranteed rights as set forth in Article 28 D (1) of the 1945 Constitution including the right to obtain justice:

"Everyone is entitled to recognition, security, protection and the legal certainty of fair and equal treatment before the law";

4. That the Plaintiff as a citizen of the Republic of Indonesia domiciled in Jakarta is entitled to obtain an optimal level of health as outlined in the Law of the Republic of Indonesia No. 23 of 1992 Article 4 on Health;
5. That as a citizen of Indonesia domiciled in the Special Capital City District (DKI) of Jakarta, the Plaintiff has a right to peace of mind, security and safety in the consumption of goods and/or services as listed in Article 4 (a) and correct, clear and honest information regarding the condition and guarantee of goods and / or services in accordance with Article 4 (c) of Law No.8 of 1999 on Consumer Protection;
6. That the Plaintiff is the father of two children, each under the age of five years, namely: Bonauli M.E.L Tobing, born on November 6, 2004 (age 3 years 4 months) and Jethro M. L. Tobing born on May 24, 2006 (age 1 year 10 months);
7. That the Plaintiff's second child was breastfed exclusively during + / - 6 months, and after this age the child consumed milk formula based on the belief of the Plaintiff that milk formula provided the nutritional benefits

required to raise healthy children;

III. The Tortious Actions of Defendant I

8. That according to the jurisprudence surrounding tortious actions as defined in Article 1365 of the Civil Code as well as the Hoge Raad Arrest Decision of January 31, 1919 which is still relevant today, then the acts committed by the Defendant are tortious and violate not only state law, but also applicable laws relating to the principles of morality and decency. The Defendants actions also violate the rights of others, and the rights of others as guaranteed by law and are contrary to the legal obligations of the person committing the tortious action as well as contrary to the morals and behavior expected by citizens in a community which must consider the interests of others;
9. That Defendant I has committed a tortious action as set forth in Article 1365 of the Civil Code which states, "Every tortious action, which brings harm to another person, requires the person who caused damages as a result of his/her fault, to replace the damages incurred". The application of this provision to the facts is below;
10. That Defendant I completed research, chaired by Dr. Sri Estuningsih and published via the website, Bogor Agricultural Institute (www.ipb.ac.id) on February 17, 2008, which concluded that there were a number of infant formula and baby food products contaminated by enterobacter sakazakii, a bacteria which produces heat-resistant enterotoxins and which were found to cause enteritis, sepsis and meningitis in neonatal mice used in the research as test subjects to determine the potential effect on children;
11. That while Defendant I published the conclusions of the research results, the

Defendant omitted to publish the type and brand name of contaminated formula milk products;

12. That Defendant I submitted the results of research to Defendant III with no explanation regarding the product name and type of infant formula which was contaminated;

IV. The Tortious Actions of Defendant II and III

18. That as a result of the publication of the research results of Defendant I and the omission to publish the exact types and names of products contaminated, the Plaintiff as well as the public at large, felt extremely concerned about which infant formula brands were contaminated by enterobacter sakazakii bacteria;
19. That Defendant II (the body which received the results of the research conclusions of Defendant I) has also committed a tortious action by not providing an official explanation regarding the name and type of formula milk products contaminated with bacteria. This is despite their obligation to do so;
20. That Defendant II failed in its obligation to require the full results of Defendant I, as well as its obligation to undertake further research and investigation into the matter and then finally to make the complete results available to the general public;
21. That the Defendant III as the Minister of Health of the Republic of Indonesia has failed in their duties as a government body by not providing clarification to the public regarding the types of dairy products and other items contaminated with enterobacter sakazakii. In fact, Defendant III questioned the research results of Defendant I, and together with Defendant II, stated

publically that these milk products were no longer in circulation;

22. That because of increasing press attention, both in print and electronic media, as well as the lack of a public announcement by the Defendants regarding the brand names of formula products contaminated by enterobacter sakazakii, the Plaintiff as a father with the welfare of his children in mind, as well as the general public, began to feel quite anxious and uneasy about purchasing infant formula;

V. The Defendant's Violation of the Principles of Propriety, Precision and Caution

4. That the substantial legal requirements of this tort are as follows:

1. Actions contrary to the legal obligations of the tortfeasor, or;
2. Violates the subjective rights of others, or violates ethical rules (goede zeden), or;
3. Contrary to the principles of "propriety", "precision" and "caution" in social interactions:

19. That Defendant I as an educational institution violated the principles of propriety, precision and caution in their research paper entitled the *Potential Occurrence of Meningitis in Neonatals due to Enterobacter Sakazakii Infection Isolated in Baby Food and Milk Formula*, by not transparently making public their findings regarding milk products that may have been contaminated, and that required recall;
20. That if the research results of Defendant I were able to be tested appropriately in a clinical and scientific manner, then Defendant I should have referred their research results immediately to Defendant II as the appropriate oversight authority. Further to this, Defendant II was obliged to announce the research

results of Defendant I to the general public in order to avoid misinformation and speculation that may have confused and disturbed the general public:

21. That Defendant III as Minister of Health is a body / institution charged with monitoring the standards of food and beverages available in Indonesia. Defendant III acted in precisely the opposite way by failing to perform its obligations regarding enterobacter sakazakii research results obtained from Defendant I;
22. That Defendant I should have completed research in a comprehensive manner, which would have meant providing their complete results of research. Defendant I has a scientific responsibility to take seriously the concerns and queries of the general public who purchase milk formula;

VI. Tortious Actions Committed by the Defendants Causing Damages Suffered by the Plaintiffs;

23. That because of the tortious actions committed by the Defendants, the Plaintiff has suffered material damages;
24. That due to the actions of the Defendants, the Plaintiff has incurred damages for time expended investigating which formula milk products were contaminated with enterobacter sakazakii bacteria and which has consequently interfered with both the leisure and work time of the Plaintiff;
25. That the Plaintiff suffered damages caused by fear and concern about the potential health consequences of infant formula habitually consumed by his children which may have been contaminated by enterobacter sakazakii;

Based on the matters described above, the Plaintiff requests the Central Jakarta

District Court finds as follows:

1. In favor for the Plaintiff for the whole;

2. To make a declaration that the Defendants have committed a tortious action;

3. To legally require the Defendants to jointly publish results of research conducted by the Defendant I, including but not limited to the names and types of formula and milk products contaminated with enterobacter sakazakii in a transparent and detailed manner in both print and electronic media, no later than 1 day after the judgment is handed down;

4. Require the Defendants to pay costs.

Or,

If the Chair of the Central Jakarta District Court finds otherwise, the Plaintiff requests that the court makes a decision based on what is fair and equitable (*ex aequo et bono*).

Considering that the response of the Defendants to this claim rests on the following arguments:

DEFENDANT I's RESPONSE:

1. The Lawsuit is Obscure (*Obscuur Libel*);

Legal Reasoning: that the Plaintiff's claim against Defendant I is an obscure lawsuit (*obscuur libel*) because the Plaintiff has used unclear legal reasoning in their application;

- The Plaintiff has used Article 1365 of the Civil Code (Torts) as the legal basis of the claim. The Plaintiff's case is based on his standing (Legal Position of the Plaintiff/ Legal Standing) as a person / individual who has suffered damages, yet at the same time the Plaintiff has argued that he has standing as a consumer based on Article 4 (a) and Article 4 (c) of Law No. 8 of 1999 regarding Consumer Protection;
- If the Plaintiff has standing as a consumer (according to Article 4 (a) and Article 4 (c) Law No. 8 of 1999 on Legal Standing) then the Defendant in this case must qualify as a business entity (that is, the type of party the litigants are required to be in a consumer action case). Defendant I as IPB does not meet this requirement as it is not a business;

Therefore, it is appropriate that Plaintiff's lawsuit is rejected;

2. The Plaintiff has failed to meet the legal qualifications to be considered a Plaintiff

Legal Reasoning: That paragraphs 6 and 7 of the Plaintiff's claim for Legal Status/ Legal Standing include the following statements:

Paragraph 6

That the Plaintiff is the father of two children, each under the age of five years, namely Bonauli M. EL Tobing, was born on November 6, 2004 (age 3 years 4 months) and Jethro M. EL Tobing was born on May 24, 2006 (age 1 year 10 months);

Paragraph 7

That the Plaintiff's second child was breastfed exclusively during + / - 6 months, and after this age the child consumed milk formula based on the belief of the Plaintiff that milk formula provided the nutritional benefits required to raise healthy children;

The research of Defendant I into the presence of enterobacter sakazakii in formula products was undertaken in the period April - June 2006. Infant formula is used for children aged 0-12 months. Regarding the Plaintiff's children, at the time the research was undertaken by Defendant I (April- June 2006), the Plaintiff's two children were aged 1 year and 8 months, and 1 month respectively. Further to this, the Plaintiff outlined in paragraph 7 of his submission that his younger child was exclusively breastfed until the age of 6 months. Consequently, based on the above, it can be presumed that the Plaintiff's two children did not consume the infant formula used as a sample study by Defendant I. Thus, the plaintiff clearly has no interest or legal grounds to file a lawsuit against the Defendants. Therefore, it is appropriate that Plaintiff's claim is either rejected or at the least not accepted by this court;

DEFENDANT II's RESPONSE

Concerning the Authority of the Central Jakarta District Court

1. That based on the Plaintiff's statement of claim dated March 17, 2008, the Plaintiff requests that this court compels the Defendants to fulfill their legal responsibilities;
2. That Defendant II (Food and Drug Monitoring Watchdog) is a Non-Departmental Government Institution established by Presidential Decree No. 103 of 2001 regarding the Position, Task, Function, Authority, Organisational Structure and Working Procedures of Non-Departmental Government Institutions. This Decree has been amended several times, including most recently by Presidential Regulation No. 64 of 2005;
3. That as a Non-Departmental Government Institution, Defendant II is an agency or State administrative officer as defined within Article 1 (2) of Law No.5 of 1986 on the State Administrative Court;

"A State administrative agency or official is an agency or official which conducts the affairs of government according to regulations outlined in applicable legislation";

4. That as outlined above in paragraph 1, the main request of the Plaintiff is that the Defendants are compelled by this court to fulfill their respective legal duties;
5. That a request by the Plaintiff for Defendant II to be compelled to fulfill its legal duties constitutes a matter of Administrative Law as outlined in the Decision on State Administrative Bodies or Officers;
6. Thus, this dispute should be construed as a matter falling with the jurisdiction of the State Administrative Courts rather than within the jurisdiction of the Central Jakarta District Court;

7. That based on the above reasoning, Defendant I requests that this esteemed panel of judges reject the Plaintiff's lawsuit;

The Plaintiff's Claim is Unclear (Obscuur Ubel)

8. That in addition, the Plaintiff's case is unclear/ *obscuur libel* according to the following reasoning:
   a. That the Plaintiff's claim is unclear as to whether the tort committed (*onrechmatigedaad*) is based on Article 1365 of the Civil Code (KUHPer) or is instead a consumer protection claim based on Article 45 of Law No.8 of 1999 on Consumer Protection;
   b. That in his statement of claim, the Plaintiff stated that Defendant II had committed a tortious action by not providing formal clarification concerning the brand name and type of milk formula products contaminated with enterobacter sakaazakii (*vide* paragraph 14 of the Plaintiff's statement of claim), whereas in another section the claim is based on Law No.8 of 1999 on Consumer Protection;
   c. That this uncertainty will also cause confusion as to the burden of proof in this case, that is, whether or not the burden of proof is subject to a tort action against a institution (PMH) or rather constitutes a consumer protection matter;
   d. That consequently, it is appropriate according to the principles of tort law that the Plaintiff's case is not accepted by the Court;

Concerning *Error in Persona*

9. That the lawsuit filed against Defendant II is an *error in persona* based on the

following reasoning:

a. That the legislative rules governing Defendant II as a Non-Departmental Government Institution with monitoring responsibilities for drugs and food, include and are not limited to the following legislation and regulation: Law No. 23 of 1992 on Health, Law No. 7 of 1996 on Food, Law No. 5 of 2007 on Psychotropic Drugs, Law No.22 of 1997 on Narcotics, Government Regulation No. 72 of 1998 on the Safety of Pharmaceutical and Medical Tools, Regulation No. 69 of 1999 on Food Labels and Advertising, Government Regulation No.28 of 2004 on Safety, Food Quality and Nutrition, Ministry of Health Regulation No.722/Menkes/Per/IX/88, 1988 on Food Additives, Presidential Decision No. 103 of 2001 on the Position, Duties, Functions, Authority, Organisational Structure and Working Procedures of Non-Departmental Government Institutions, which has been amended several times, most recently through Presidential Regulation No.64 of 2005 and Presidential Decree No.110 of 2001 on Organisational Units and the Duties of Top Echelon Non-Departmental Government Institutions as amended by Presidential Decree No.52 of 2005, the decision of the Head of the POM No.02001/SK/KBPOM in 2001 on the Organisation and Working Procedures of POM as amended by Decree of the Head of POM No.HK.00.05.21.4231 in 2004. Based on the above legislative regulations, there are no provisions requiring Defendant II to publish the research results of institutions falling outside the

purview of Defendant II;

b. That provisions relating to the core tasks and functions of Defendant II do not extend to reporting mechanisms for the research results of institutions falling outside the purview of Defendant II;

c. That Defendant I in its capacity as an educational institution and research organisation acted responsibly by reporting their research results to the Education Oversight Body, as well as to their institutional grant bodies;

d. Further to this, the Plaintiff's claim that this is a consumer protection matter constitutes an *error in persona*;

e. That Defendant II is not a party to any claims based on consumer protection law. This is based on the following evidence:

e.1. The legal provisions concerning consumer protection claims;

e.2. That Article 45 Paragraph (1) and 46 (1) of Law No. 8 of 1999 states:

"Each affected consumer can sue the responsible business through the institution tasked with resolving claims between consumers and businesses or through the appropriate courts as outlined in Article 46 Paragraph (1)."

"Claims relating breach of duty committed by a business can be launched by:

a. A consumer who suffers loss or concerned beneficiaries;

b. A group of consumers with similar interests;

c. Nongovernmental consumer protection groups which fulfill the requirements, that is, they form either an incorporated legal entity or a foundation, which in their constitution states clearly that the objective

of the organisation is the promotion of the interest of consumers and that to this end, the organisation has implemented activities in accordance with their constitution;

d. Government and / or related agencies if the goods and/or services consumed and/ or used result in significant material losses and/or the number of victims affected are not insignificant."

e.3. That, pursuant to the provisions outlined above, the key principles of a consumer protection dispute are:

- A group of consumers with shared interests;
- Nongovernmental consumer protection groups fulfilling the legislative requirements for standing, that is, either constituting an incorporated legal entity or a foundation, which states clearly in their constitution that the objective of the organisation is the promotion of the interest of consumers and that to this end, the organisation has implemented activities in accordance with their constitution;
- Government and / or related agencies if the goods and/or services consumed and/ or used result in significant material losses and/or the number of victims affected are not insignificant;

e.4. That the party accused (as Defendant) is a business (see Article 45 Clause (1));

e.5. That based on the description above it can be claimed, that Defendant II should not be considered a party to this consumer protection dispute, because the Defendant is not a business;

e.6. That Defendant II is a Non-Departmental Government Institution;

f. That Defendant II should therefore not be considered as a Defendant in this case;

Thus it is clear that, the lawsuit filed against Defendant II constitutes an *error in persona*;

Regarding the argument that they are not a party to the case:

11. That in connection with the above reasoning regarding the defense of *error in persona*, which discussed Defendant I's (Bogor Agricultural Institute) reporting relationship with the Education Oversight Body as well as to research sponsorship committees, then the court should consider that Defendant I is not a party to this claim;
12. That instead the Education Oversight Body and that the research grant body should therefore be considered one of the parties in this case;
13. That if the Education Oversight Body and the grant body are considered a party to this case, then the current claim of the Plaintiff will have no relation to the actions of Defendant I and the claim should be rejected by the court;

DEFENDANT III's RESPONSE:

1. **The Central Jakarta District Court Case does not have the authority to hear this case *a quo***

That the Plaintiff in his application on page three, paragraph IV, item 16, contends that Defendant III committed a tortious action by failing to fulfill its role as a government institution by not providing public clarification regarding the types of dairy products and other food items that may have been contaminated by enterobacter sakazakii;

Defendant III is a government institution whose tasks and functions are outlined in legislation as well as the principles of the 1945 Constitution. If it is true that the Government did not enforce the appropriate legislation as required, then Defendant III as Minister of Health who has the role of assisting the President in his/her role as the executive branch of government, then the Government in this matter, that is the President and the Ministers, should be held accountable by the Legislature who have the role of overseeing the Government;

Thus, dependent on the availability of admissible evidence, the Minister of Health has either made a mistake or an omission in not performing their duties in accordance with the law, and the level of accountability required in this case is one determined by the position of the relevant party, for example dismissal from the position (accountability in public office). For these reasons, there is no liability within the scope of civil law;

Therefore, the liability of Defendant III is not a civil law liability (*privaatrechtelijke veraant woordelijheid*), but is rather constitutes a matter of public liability (*publiekrechtelijke veraantwoordelijkheid*);

Thus the Central Jakarta District Court (with jurisdiction over civil cases) has no

jurisdiction to hear this case;

Consequently, Defendant III requests that the panel of Judges in this case declare that they have no authority to hear this matter and that further to this, that they reject the Plaintiff's case in its entirety, or at least make a judgment that the Plaintiff's application cannot be considered by the court;

2. The Claim is Misdirected

That as stated in the Plaintiff's statement of claim on page two, paragraph II, point number 5, the Plaintiff bases their legal standing to bring a case *a quo* on Article 4 (a) and (c) of Law No. 8 of 1999 on Consumer Protection which states that the Plaintiff has the right to peace of mind, security and safety in the consumption of goods and / or services and that information regarding the product should be correct, clear and honest as to the condition and relevant guarantees of the goods and / or services;

In Article 45 (1) of Law No.8 of 1999 on Consumer Protection, it states:

"Every consumer who suffers damages can sue the business responsible through the institution tasked with the resolution of disputes between consumers and businesses or though courts with general jurisdiction."

Pursuant to Article 45 (1) of Law No.8 of 1999 on Consumer Protection only the business deemed to have violated the provisions of Law No.8 of 1999 on Consumer Protection can be sued;

That in this case, none of the Defendants are a business as so defined in Law No. 8 of 1999 (1) clause (3), which states:

"A business is any individual or business entity, either incorporated or not, established and undertaking activities within the Republic of Indonesia, either individually or through a joint agreement with another company/ companies, and

undertaking business ventures in any of a number of different economic areas."

Based on the above, none of the Defendants meet the legislative requirements to qualify as a business, with the result that the Plaintiff's case constitutes a case *a quo* that is misdirected. Consequently, because the Plaintiff's claim in this case is *a quo* and misdirected, then so Defendant III requests that the panel of Judges in this case reject the Plaintiff's case in its entirety, or at the least make a ruling that the case is unable to be considered by this court;

3. The Plaintiff lacks the authority to file a claim:

That the Plaintiff has no authority to file a claim relating to the research results of Defendant I because in section II of the Plaintiff's statement of claim, the Plaintiff argued that his standing to bring this matter was based on his role as a father to two children aged under five years, that is, Bonauli MEL Tobing, born November 6, 2004 (aged 3 years 4 months) and Jethro ML Tobing born on May 24, 2006 (aged 1 year 10 months). However, the Plaintiff's legal reasoning in section IV and V of his statement of claim outlined how research undertaken by Defendant I had caused public unrest;

That to file suit in this court on the basis of an act causing public unrest based on the Law of Civil Procedure, the Plaintiff must first obtain a Letter of Authorisation by means of a proportional public representative;

Due to the fact that in this lawsuit the claim filed by the Plaintiff does not contain a Letter of Authorisation from the general public, then the Plaintiff does not possess the authority to file a lawsuit alleging the Defendants have engaged in behavior causing public unrest;

For these reasons, Defendant III requests that the panel of judges examining this case

in the Central Jakarta District Court reject the Plaintiff's case in its entirety or at the least make a ruling that the case is unable to be considered by the court;

4. Not a Party to the Case

The research conducted by Defendant I was conducted with funding obtained from the Directorate General of Higher Education within the Department of Education;

Consequently there was a reporting relationship in which all research findings by Defendant I were required to be reported to the grant body, which in this case was the Directorate General of Higher Education within the Department of Education. The Directorate General of Higher Education within the Department of Education, as the grant body, had the authority to make decisions relating to the provision of grant monies, which it did in this case to Defendant I for research relating to enterobacter sakazakii bacteria. Defendant I discharged their responsibility by providing research reports to their oversight body, however, the Directorate General of Higher Education did not discharge their responsibility to oversee and monitor their grant recipients. Therefore, the Directorate General of Higher Education should be considered a party to this case;

For these reasons, Defendant III requests that the panel of Judges examining this case in the Central Jakarta District Court reject the Plaintiff's case in its entirety or at the least make a ruling that the case is unable to be considered by the court;

That regarding this case, the Central Jakarta District Court has made a finding, namely decision No. 87/PDT.G/2008/PN.Jkt.Pst dated August 20, 2008, which states:

Regarding the Responses of the Defendants:

- States that the responses of Defendants I, II and III cannot be accepted:

Key Findings of the Case:

1. In favour of the Plaintiff for the following;
2. Finding that Defendants I, II, and III have committed tortious actions;
3. Requiring the Defendants to publish jointly and transparently Defendant I's research and thereby make public the names and types of infant formula contaminated with enterobacter sakazakii in both print and electronic media;
4. Requiring the Defendants to pay costs for the Plaintiff which are estimated at Rp. 414, 000 (four hundred and fourteen thousand rupiah);

Considering that when Appellant I (originally Defendant III), Appellant II (originally Defendant I), and Appellant III (originally Defendant II) appealed this decision to the Jakarta High Court, the court upheld the decision of first instance in the Central Jakarta District Court (Decision No. 83/PDT/2009/PT.DKI April 6, 2009);

Considering that Defendant I was notified of final judgment on July 10, 2009; on July 22, 2009 a verbal appeal in cassation (No. 84/SRT.PDT.KAS/2009/PN.JKT.PST jo. 87/PDT.G/2008/PN.JKT.PST) was lodged by proxy (special power of attorney dated July 21, 2009) with the Registrar of the Central Jakarta District Court. The appeal in cassation was accompanied by a memorandum of cassation stating the grounds for appeal and was filed with the Central Jakarta District Court on August 4, 2009;

That after the Plaintiff/ Respondent received a memorandum of cassation from Defendant I on August 13, 2009; the Respondent filed their response to the appeal in cassation on August 27, 2009 with the Registrar's Office at the Central Jakarta District Court;

Considering that Defendant II was notified of final judgment on May 29, 2009; on June 11, 2009 a verbal appeal in cassation (No. 5/SRT.PDT.KAS/2009/PN.JKT.PST jo. 87/PDT.G/2008/PN.JKT.PST) was lodged by proxy (special power of attorney dated July 9, 2009) with the Registrar of the Central Jakarta District Court. The appeal in cassation was accompanied by a memorandum of cassation stating the grounds for appeal and was filed with the Central Jakarta District Court on June 25, 2009;

That after the Plaintiff/ Respondent had been notified of the appeal in cassation of Defendant II on July 31, 2009, the Respondent filed a response to the appeal in cassation with the Registrar's Office of the Central Jakarta District Court on August 13, 2009;

Considering that that final judgment was made regarding Defendant III on August 3, 2009; on August 19, 2009 a verbal appeal in cassation (No. 85/SRT.PDT.KAS/2009/PN.JKT.PST jo. 87/PDT.G/2008/PN.JKT.PST) was lodged by proxy (special power of attorney dated April 15, 2008) with the Registrar of the Central Jakarta District Court. The appeal in cassation was accompanied by a memorandum of cassation stating the grounds for appeal and was filed with the Central Jakarta District Court on August 21, 2009;

That after the Plaintiff/ Respondent had been notified of the appeal in cassation of Defendant II on September 4, 2009, the Respondent filed a response to the appeal in cassation with the Registrar's Office of the Central Jakarta District Court on September 16, 2009;

Considering that the grounds for appeal in cassation *a quo* have been thoroughly communicated to the opposing party, within an appropriate timeframe and in the proper manner according to the law, there are no hurdles to this case being considered by the court.

Considering the legal reasoning of the Appellants/ Defendants, the essence of their case is:

CASSATION PETITIONER I:

1. That remembering that the Appellate Judges/ the High Court of Jakarta declared that they fully accepted the legal reasoning of the Judges at first instance (Central Jakarta District Court) and so did not engage in their own legal reasoning, then so the Cassation Petitioner has concluded that the objections contained within this memorandum of cassation refer to the legal reasoning of the Judges at first instance;
2. That the Judges at the Central Jakarta District Court and the Judges of the High Court of Jakarta (*judex facti*) made an error of law in deciding that Defendants I, II, and III have committed tortious actions;

The Cassation Petitioner contends that the Judges in the Central Jakarta District Court in their examination, consideration and judgment did not fully consider and in fact, contradicted the applicable laws of civil procedure; most especially Articles 163 and 283 RBg which states: "Whosoever contends the existence of a right, the right to enforce a right, or the right to deny rights to other persons, must first establish the existence of that right."

Based on the above, it is clear that the Respondent/ Plaintiff to the claim must first prove that his individual rights were violated (because the original claim was based on a violation of his individual rights). This violation must have been committed by the Appellant/ Defendant and be based on the evidence submitted;

As the argument submitted to the court by the Respondent (originally the Respondent/ Plaintiff) that the Cassation Petitioner had committed a tortious action as outlined in

Article 1365 of the Civil Code: “Every tortious action, which causes damages to another person, requires that the person who caused the loss, due to his/ her own fault, to restore the loss suffered by the victim.”

Article 1365 of the Civil Code also requires that the parties must establish the existence of losses (*schade*) by the victim or the Respondent: As in the consideration of the Judges of the Central Jakarta District Court on page 49, paragraph 2 (*vide* the Decision of the State Court of Central Jakarta No. 87/PDT.G/2000/PN. JKT. PST) which states:

“Considering the requirement for a causal connection between the tortious actions and the loss suffered, then the Judges considered that the refusal of the Defendants to publish information about which formula products were fit for consumption caused the public to become anxious and nervous about purchasing formula products. In this way, the rights of consumers were indeed violated; this is because consumers have the right to obtain correct, clear and honest information about products they consume. Consequently, the Plaintiff and/or consumers suffered a loss”;

A mistake has already occurred in the legal reasoning of the court, because it is unclear within the reasoning exactly whose interests have been harmed, as well demonstrating a biased interpretation of the evidence submitted in the case (this is because the evidence submitted to the court should contain concrete facts, be relevant to the lawsuit and *prima facie,* that is proving a situation or event that is directly relevant to the case being examined by the court). The written evidence submitted by the Respondent as the aggrieved party, is a public fact in the form of public unrest (*vide* exhibit P-3 s / d P-10E), that the Judges in their capacity as *judex factii* should not have considered as analogous with the loss suffered by the Respondent. Then, with reference to the provisions of Article 163 HIR and Article 283 RBg, Article 1365

Civil Code (which was discussed above), the submission of written evidence by the Respondent/ Plaintiff is quite irrelevant to the legal status (legal standing) of the Plaintiff in filing the lawsuit as an individual who felt he had suffered a loss. The Plaintiff is not a public representative, and does not represent the public in cases of public concern like an NGO (*vide* decision of the Central Jakarta District Court No. 87/PDT.G/2008/PN. JKT. PST, page 45, paragraph 5).

3. That as none of the written evidence of the Respondent/Plaintiff demonstrates losses suffered directly (*vide* exhibit P-3 to P-10E), the Cassation Petitioner contends that there should be an element of loss suffered by the victim in order to satisfy the requirements of Article 1365 of the Civil Code. This requirement has not been fulfilled. To determine whether or not an act catergorised as a tortious under Article 1365 in the Civil Code has occurred the following elements in their entirety (cumulative) must be met:
    a. The existence of an act;
    b. That the act was unlawful;
    c. The presence of fault on the part of the perpetrator;
    d. The presence of harm suffered by the victim;
    e. The presence of a causal relationship between the act of the tortfeasor and the loss suffered by the victim;

    If the legal reasoning of the Judges of the Central Jakarta District on page 45, paragraph 5 (*vide* decision of the Central Jakarta District Court No. 87/PDT.G/2008/PN. JKT. PST) states that the statement of evidence submitted by the Plaintiff in the form of P-3 s/d P-10 is supportive of public facts;

    Consequently, it is an irrefutable fact that the Judges in the Central Jakarta

District Court actually have already acknowledged there is nothing in the written evidence submitted by the Respondent/ Plaintiff supporting the existence of a loss directly experienced by the Respondent;

4. That the Appellant contends, there has been a fundamental error of law in the understanding and application of the term "Tortious Action" as intended in Article 1365 of the Civil Code and related to the scope of civil liabilities for persons or state authorities (*onrechtmatige overheidsdaad*). In this matter the government agency (the Cassation Petitioner) refers to the judgment of the Central Jakarta District Court on page 49, paragraph 1 which states:

"Based on the legal considerations above, the panel of Judges has formed the opinion that the actions of Defendants I, II and III in deliberately refusing to make public the types of infant formulas contaminated with "enterobacter sakazakii" bacteria (as well as any other products that may have been affected) constitutes an a tortious action as so defined in Article 1365 of the Civil Code. These acts have been deemed contrary to the legal obligations of the Defendants, or a violation of the subjective rights of others. In addition to that, the attitude of the Defendants is deemed contrary to the principles of propriety, precision and caution in social interactions";

The legal responsibilities (*rechtsplicht*) of the Cassation Petitioner as a public authority/ government agency are not the same as the responsibilities of an individual, and the provisions of Article 1365 of the Civil Code (1401 BW) cannot be deemed to apply equally to public authorities/ government agencies;

The legal obligations of the Cassation Petitioner as a public/ private legal entity must be governed by regulations and laws relating to the position, functions, powers and organisational and governance structures required to create "public order". This is needed in order to regulate what constitutes the functions and powers of the entity, or

to define the legal liabilities of the Cassation Petitioner;

In the context of the issue of the publication of the research results, the panel of Judges in the Central Jakarta District Court should have seen the position of the Cassation Petitioner as a government agency or an institution of higher learning/ research facility (*vide* Law of the Republic of Indonesia No. 18 of 2002 on the National Education System, Development, and the Implementation of Technology). The publication of research results without mention of the particular brands used in the sample study was carried out in accordance with the core tasks and functions of the Cassation Petitioner as a research institution and was in accordance with the scope of its legal obligations as a public body;

Research conducted to test for the presence of "enterobacter sakazakii" was undertaken using random sampling measures. This cannot be seen as the same as actively monitoring and testing certain products such as infant formula for bacteria. By using random sampling research methodology, the actions of the Cassation Petitioner as lecturers/ researchers were in line with the ethical requirements of their research (code of conduct). Consequently, the acts of the Applicant/ Defendant I were in accordance with their legal obligations as a public government body and as a teaching and research facility;

In reaching its judgment, the Central Jakarta District Court on page 49, paragraph 1, as mentioned above, clearly has not carefully and correctly considered the different legal responsibilities for legal entities falling within the scope of public law as opposed to legal obligations arising in the jurisdiction of civil law;

This has resulted in it being construed that the Cassation Petitioner in implementing the provisions of their guiding legislation (as outlined above) has in fact acted against their legal obligations. Unless in the Cassation Petitioner's performance of their legal

obligations it is shown that they did not fulfill their rules and principles of research and scientific inquiry (as referenced in the doctrine of *trespass ab intio*);

Therefore, the Cassation Petitioner contends that the Judges of the Central Jakarta District Court made an error in law in reaching their judgment;

Then based on the above, the Cassation Petitioner requests the wisdom and opinion of the Justices of the Supreme Court to overturn the judgment of the High Court of Jakarta in decision No. 83/PDT/2009/PT.DKI.

5. That if the Respondent filed suit because they suffered loss, then the Respondent could have mitigated their losses (*vide* the case on page 6, numbers 23-25) because the Respondent had the intellectual ability as well as access to fast information technology (internet). Consequently, it appears that the Respondent has fabricated his loss of time and his feelings of anxiety and worry. Moreover, before the Respondent filed suit he never sought information either orally or in writing from the Appellants (that is, the Defendants: IPB, the Food and Drug Administration Watchdog and the Department of Health). The Respondent should therefore be considered contributory negligent for any loss suffered.

CASSATION PETITIONER II:

Time Requirements of the Case

1. That the appeal filed by the Cassation Petitioner/ Defendant II has been filed within the appropriate time as outlined in Article 55 paragraph (1), Article 46 paragraph (1) and (2) of Law No. 14 of 1985 on the Supreme Court as amended by Law No. 5 of 2004;

- Article 46 paragraph (1) of Law No. 14 of 1985:

An Appeal in Cassation can be submitted in writing or orally by means of the Registrar of the court hearing the matter at first instance within 14 (fourteen) days after the decision or the determination of the court is communicated to the Applicant;

- Article 46 paragraph (2) of Law No. 14 of 1985:

If the period of 14 (fourteen) days expires without any appeal filed by the parties, then the parties are deemed to have accepted the verdict of the court.

2. That based on the account of the notification of decision of the High Court of Jakarta No. 83/PDT/2009/PT.DKI received by the Cassation Petitioner on May 29, 2009, an appeal in cassation against the decision *a quo* by the Cassation Petitioner/ Defendant II was lodged on June 11, 2009;
3. That the period of time elapsed from the receipt of notice *a quo*, dated May 29, 2009, until the date the appeal was lodged, dated June 11, 2009, has fulfilled the time frame outlined in law regarding the lodgment/ claim for an appeal that is less than 14 (fourteen) days as required by Article 46 paragraph (1) and paragraph (2) of Law No. 14 of 1985 on the Supreme Court, as amended by Law No. 5 of 2004;
4. That with the fulfillment of the timeframe specified in Article 46 paragraph

(1) and paragraph (2) of Law No. 14 of 1985 on the Supreme Court, as amended by Law No. 5 of 2004, then the decision *a quo* (No. 83/PDT/2009/PT.DKI, April 6th, 2009) is not yet in force which means that an appeal in cassation can still be filed against the decision;

5. That because an appeal against the verdict *a quo* may still be filed, then so the Cassation Petitioner/ Defendant II requests that the esteemed Justices of the Supreme Court accept this appeal from the Cassation Petitioner/ Defendant II.

Concerning the Decision *A Quo*

1. That the Cassation Petitioner is strongly opposed to the decision of the Jakarta High Court in decision No. 83/PDT/2009/PT.DKI, dated April 6, 2009, because the *judex facti* has erroneously implemented and applied the law, assessed the evidence and the law of civil procedure, as well as not properly applied the particular provisions regarding the legal authority of the Food and Drug Administration Watchdog;
2. That the legal reasoning of this appeal will be systematically outlined below:

The Legal Consideration of the Appellate Judges

3. That the basis of the arguments of the Cassation Petitioner/ Plaintiff is the following legal judgment:

"The memorandums of appeal submitted by the Appellants (originally the Defendants) do not raise any new matters and therefore the decision of the Central Jakarta District Court(No. 87/PDT.G/2008/PN.JKT.PST August 20, 2008) stands."

4. That it is clear, that the *judex facti* in the appellate case was decided without considering the Cassation Petitioner's legal arguments. Besides, these

arguments, both as expressed in the hearing of the matter at first instance as well as in the memorandum of appeal, once again explain the authority and the responsibilities of the Cassation Petitioner/ Defendant II in this case;

5. That the new arguments contained within the memorandum of appeal were not considered by the Justices of the Appellate Court *a quo*;
6. That therefore the Cassation Petitioner requests that the honorable Supreme Court Justices accept this appeal in cassation of the Cassation Petitioner/ Defendant II, because the *judex facti* in the lower courts have erroneously implemented and applied the law, assessed the evidence and civil procedure law and in particular the provisions regarding the legal authority given to the Food and Drug Administration Watchdog;
7. That because of this the Appellant has confidence that the *judex facti* can be overturned by the Jakarta High Court;

The Publication of the Research Findings of Defendant I (IPB)

8. That the Cassation Petitioner/ Defendant II requests a fair consideration by the esteemed Justices of the Supreme Court of the decision of the High Court which affirmed the decision at first instance which required the Defendants (including the Cassation Petitioner/ Defendant II) to publish the research results of Defendant I by naming the names and types of milk formula contaminated by enterobacter sakazakii, in a transparent manner in both electronic and print media. The Cassation Petition requests that the Supreme Court finds this decision did not consider the facts and legal legitimacy of existing laws and regulations;
9. That in fact, the Cassation Petitioner/ Defendant II does not have access to

Defendant I's (IPB) research data, because Defendant I did not report to (and in fact did not have a reporting relationship with) Defendant II as they were an organisation falling outside the purview of Defendant II (the Food and Drug Administration Watchdog);

10. That no authentic or admissible evidence can prove the accusation that the results of research were submitted to Defendant II (the Cassation Petitioner) by Defendant I;
11. That Defendant I in their capacity as an educational and research facility fulfilled their responsibilities by reporting their research results to the relevant educational supervisors and the research grant body, and not to Defendant II;
12. That the legal legitimacy of the Cassation Petitioner/ Defendant II is based on its status as a Non-Departmental Government Institution that assists the government in monitoring food and drug products, which includes and is not limited to the following legislation: Law No. 23 of 1992 on Health, Law No. 7 of 1996 on Food, Law No. 5 of 2007 on Psychotropic Drugs, Law No.22 of 1997 on Narcotics, Government Regulation No. 72 of 1998 on the Safety of Pharmaceutical and Medical Tools, Regulation No. 69 of 1999 on Food Labels and Advertising, Government Regulation No.28 of 2004 regarding Safety, Food Quality and Nutrition, Ministry of Health Regulation No.722/Menkes/Per/IX/88, 1988 on Food Additives, Presidential Decision No. 103 of 2001 on the Position, Duties, Functions, Authority, Organisational Structure and Working Procedures of Non-Departmental Government Institutions, which has been amended several times, most recently through Presidential Regulation No.64 of 2005 and Presidential Decree No.110 of 2001 regarding Organisational Units and the Duties of Top Echelon Non-

Departmental Government Institutions as amended by Presidential Decree No.52 of 2005, the decision of the Head of the POM No.02001/SK/KBPOM in 2001 on the Organisation and Working Procedures of POM as amended by Decree of the Head of POM No.HK.00.05.21.4231 in 2004. Based on the above legislative regulations, there are no provisions requiring the Cassation Petitioner/ Defendant II to publish research results of institutions falling outside of their legal purview;

13. That concerning the issue of publishing, clarifying or announcing or issuing a public warning, Article 50 of Government Regulation No.28 of 2004 on Food Safety, Quality and Nutrition states:

"The agency may make public the results of testing and/or results of the examination of food products through the media."

14. That, pursuant to the provisions above, the Cassation Petitioner/ Defendant II does indeed have the authority to make public the results of monitoring (sampling/ the taking of examples and laboratory testing), but the authority to make an announcement of public warning (public statement or public warning) is limited to the results of the examination, sampling and testing conducted by the Cassation Petitioner/ Defendant II;
15. That as is related to the legal basis of food monitoring, then so the results of research from institutions falling outside the responsibility of Cassation Petition/ Defendant II, are not the responsibility of the Cassation Petitioner/ Defendant II to publish;
16. That related to the right of the public to be protected from health issues caused by the consumption of dangerous food products, and based on Article 50 of Government Regulation No. 28 of 2004 on Food Safety, Quality and

Nutrition, the Cassation Petitioner/ Defendant II has already published information based on their legal responsibilities as Appellant/ Defendant II which are as follows:

a. POM issued a public statement on enterobacter sakazakii which contained information about enterobacter sakazakii and the reporting duties of POM to the news media about food issues as well as questions regarding the Consumer Complaints Services of POM (Appellant/ Defendant II); (*vide* exhibit TII-1);
b. POM issued a public statement regarding the laboratory testing results of enterobacter sakazakii in infant formula, outlining how BPOM had conducted further tests of the samples/ research and the examination of 96 (ninety-six) products as representative of all the brands listed. The results of these tests were that all of the samples were negative for enterobacter sakazakii; (*vide* exhibit TII-2);

The Decision was Legally Flawed

17. That as a respected and important public institution that oversees two inferior courts, it is requested that the esteemed Justices of the Supreme Court, legally examine and review the finding of the Justices of the High Court. This is because in their consideration of the responses to the Judges of the District Court, (*vide* page 39) it was stated that:

"Considering these responses, the Plaintiff has already issued a response, which essentially rejects unequivocally the arguments raised by the Defendants";

18. That during the hearing from May 14, 2008- July 23, 2008, the Respondent/ Plaintiff never filed a response;

19. That therefore, the consideration of the Judges in the District Court as outlined in figure 16 of the memorandum of cassation is legally flawed;

In the Consideration of the Case: Concerning the Entirety of the Case

1. That the Cassation Petitioner/ Defendant II requests that the esteemed Justices of the Supreme Court examine this case, considering the legal reasoning of the Petitioner for Cassation/ Defendant II which was not properly considered by the Judges of the District Court and Justices of the High Court. The arguments of the Petitioner for Cassation/ Defendant II have been outlined in submissions to the court of first instance, in the memorandum of appeal and the memorandum of cassation;
2. That regarding the entirety of the case, the Petitioner for Cassation/ Defendant II maintains the key arguments as presented in the examination of the matter at first instance and in the memorandum of appeal by the Court of Appeal in Jakarta;

Cassation Petitioner III:

That the Cassation Petitioner III strongly objects to the decision of the Jakarta High Court (Decision No. 83/PDT/2009/PTDKI April 6, 2009) as the Justices of the High Court upheld the decision of the Central Jakarta District Court (Decision No. 87/PDTG/2008/PN.JKTPST August 20th 2008). This is because one of the findings of the court in the above decision was that the Cassation Petitioner was ordered to co-publish the results of research conducted by Cassation Petitioner II;

That the Justices of the Jakarta High Court were wrong/ wrongly applied the law to the research conducted by the Bogor Agricultural Institute (IPB), chaired by Dr. Sri Estuningsih, and published via the IPB website. The results of that study stated that several brands of milk formula and baby food which were sampled were contaminated with enterobacter sakazakii, of which several strains can produce heat-resistant enterotoxins which can cause enteritis, sepsis and meningitis in baby mice (small white mice), whereas in accordance with the core tasks and function of Cassation Petitioner III, there is no legal responsibility whatsoever to publish research results done by IPB which includes publishing the name/ brand name of the milk formulas and baby foods contaminated;

Article 21 (1) of Law No. 23 of 1992 on Health states that, “food and beverage safety standards are intended to protect society from food and beverages not meeting these health standards”. The implementation of Article 21 is further defined in Government Regulation No. 28 of 2004 on Food Safety, Quality and Nutrition (which was considered by the Judges at first instance). In Article 42-45 of this government regulation it is stipulated that the Food and Drug Monitoring Watchdog (BPOM) is a oversight agency, an authority, as well as a regulatory body that supervises food and beverages, with the result that BPOM is the highest supervisory body over food and

beverage regulation, so consequently, the Cassation Petitioner III has no legal authority in the field of food and beverage supervision, let alone the authority to publish the research results of Cassation Petitioner II. Further to this, in response to public unrest caused by this issue, Cassation Petitioner I (as an institution undertaking research and supervision of food and beverages) undertook further inspections/ testing of samples representing all brands of milk formula and baby food in circulation, and found that these samples tested negative for the presence of the enterobacter sakazakii bacteria. Cassation Petitioner III does not have supervisory authority in the field of food and beverages in circulation, and does not have access to Cassation Petitioner I's research data on the names of products/ brands of milk and baby food contaminated with enterobacter sakazakii. This data is the property of the party who conducted the research, that is Cassation Petitioner II.

Therefore, the court decision requiring Cassation Petitioner III to co-publish the research results of Cassation Petitioner II, as well as the name of the milk products and baby foods contaminated by the enterobacter sakazakii bacteria is wrong, since this finding is incompatible with the actual legal responsibilities of Cassation Petitioner III. Therefore, the *judex facti* has misapplied the law so that this decision *a quo* should be overruled through appeal in cassation;

Whether or not the enterobacter sakazakii bacteria is included within the minimum permissible limits of microbial contamination in infant formula products is an issue still being debated in regards to world food standards (Codex Alimentarius Commission), and as of yet there has been no final ruling regarding what is the maximum permissible levels of enterobacter sakazakii bacterial contaminant in infant formula and baby food in Indonesia. Consequently, there is not yet a control mechanism/ standard regarding the enterobacter sakazakii in infant formula, so there

are no clear standards on what are the limits of contamination in infant formula that can be categorised as harmful to human health;

Considering that on these grounds, the Supreme Court finds:

That the appeal in cassation is justified, because the *judex facti* did not make an error of law in reaching their judgment;

That the research results of Dr. Sri Estuningsih regarding suspected enterobacter sakazakii contamination of milk formula in baby food were not widely announced to the public;

That because these research results were not published widely there was public unrest caused by concern about the potential risk for consumers;

That research important research relating to the interests of society had been completed, and that this research should have been published so that members of the public could have been informed of potential health risks;

That not publishing this research did not demonstrate care on the part of the Defendants as public institutions;

Considering, that based on the above considerations, the *judex factii* in this case does not conflict with the applicable law and/or legislation, with the result that that the cassation lodged by Cassation Petitioner: Bogor Agricultural Institute DKK is rejected;

Considering, that because the appeal in cassation of the Petitioners is rejected, they are ordered to pay costs for this case;

Noting the provisions of Law No. 48 of 2009 and Law No. 14 of 1985 as amended by Law No. 5 of 2004 and the second amendment of Law No. 3 of 2009, together with the other concerned legislation:

The Court Finds:

Rejection of the appeal in cassation of the Cassation Petitioners: 1) The Bogor Agricultural Institute; 2) The Food and Drug Administration Watchdog; 3) The Government of the Republic of Indonesia *cq*. Minister of Health of the Republic of Indonesia;

Order the Cassation Petitioners to pay costs jointly in this matter to the amount of Rp. 500,000 (five hundred thousand rupiah);

Thus after deliberation the Supreme Court has handed down their decision on Monday April 26th 2010. Judgment was made by Dr. H. Harifin A. Tumpa, SH.MH, Chief Justice of the Supreme Court, Prof. Dr. H. Muchsin, SH,, and I Made Tara, SH., DR. H. HARIFIN A. TUMPA, SH.MH., Justices of the Court, and as pronounced in public session on the same day by the Chief Justice, with the attendance of the other Justices and assisted by Nawangsari, SH.MH., Substitute Registrar and not attended by the parties;

Justices of the Court,
Signed/ PROF.DR. H. MUCHSIN, SH.
Signed/ I MADE TARA, SH.

Chief Justice
Signed/ DR.H. HARIFIN A. TUMPA, SH.MH.

Costs:
1. Seal : Rp. 6,000,-
2. Redaction : Rp. 1,000,-
3. Case Adminisration : Rp. 493,000,-
Total : Rp. 500,000,-

Substitute Registrar,
Signed/NAWANGSARI, SH.MH.

For Copies:
Supreme Court Republic of Indonesia
Registrar
Deputy Civil Registrar

SOEROSO ONO, SH., MH.
NIP. 040.044.809.