

RULING

NUMBER 19/PUU-VIII/2010

FOR THE SAKE OF JUSTICE UNDER GOD ALMIGHTY

CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA

[1.1] adjudicate constitutional cases at the first and last,
passed a decision in the case of Law Number 36 Year
2009 on the Health of the Constitution of the Republic
Indonesia Year 1945, filed by:

[1.2] Name

Place, Date of Birth

:

:

Drs. H. M. Bambang Sukarno;

Magelang, February 18, 1954;

Occupation: Private;

Address: Jalan Sudirman No. 128

Waterford, Central Java Province;

Hereinafter referred to as ----- Petitioner;

[1.3] Reading the petition of the Petitioners;

Heard the testimony of the applicant;

Hearing and reading the statements of the Government;

Read a written statement of the House of Representatives;

Heard and read the Related Party National Committee

Child Protection, Indonesian Heart Foundation, Cancer Foundation of Indonesia,

Indonesian Consumers Foundation, the Association of Public Health

Indonesia, Jakarta Residents Forum Society, and dr. drh. Mangku Sitepoe;

Heard and read the ad informandum Related Parties

Judge Sorimuda Pohan, PT. Djarum, PT. HM Sampoerna, PT. Gudang Garam,

and the Joint United Cigarette Manufacturing Indonesia;

Heard the testimony of experts and witnesses of the Petitioners;

Heard the testimony of expert witnesses and the Government;

Heard the testimony of witnesses from Related Party National Committee

Child Protection;

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Checking the written evidence submitted by the Applicant and Parties

Related to the National Commission for Child Protection, Indonesian Heart Foundation, the Foundation

Cancer Indonesia, the Indonesian Consumers Foundation, and Joint

United Cigarette Manufacturing Indonesia;

Reading the written conclusions of the applicant, Government, and Party

Related to the Indonesian Consumers Foundation, the National Commission for Protection

Child, and the city of Jakarta Residents Forum;

2. CASE SITTING

[2.1] Considering whereas the Petitioner filed a petition with
petition letter dated March 17, 2010, received at the Registrar's Office

Constitutional Court (hereinafter referred to as the Court) in dated March 22, 2010 by the Deed of Acceptance of Application File Number 40/PAN.MK/2010 and registered on March 29, 2010 with No. 19/PUU-VIII/2010, which has been repaired and received at the Court on April 28, 2010 that the following main points:

I. The authority of the Constitutional Court

1. Petitioners request that the Constitutional Court (MK) conducted tests Article 113 paragraph (1), paragraph (2), and paragraph (3) of Law Number 36 Year 2009 on the Health of the Constitution of the Republic Indonesia Year 1945 (vide evidence of P-2);

2. As set forth in Article 24 of the 1945 Constitution Third Amendment states:

1) The judicial power is the power of freedom to judicial conduct in order to enforce law and justice ***);

2) The judicial power shall be done by a Supreme Court and judicial bodies underneath it in the courts public, religious courts, military courts, administrative courts and the state by a Supreme Constitution ***);

3) other agencies whose functions relate to the power of judicial stipulated in the law ****);

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3. As set forth in Article 24C Paragraph (1) Changes in the 1945 Third states:

"The Constitutional Court the authority to hear at the first and last the decision is final to test legislation against Constitution, the state agency the authority to decide disputes the authority granted by the Constitution, to decide dissolution of political parties and decide disputes concerning the election results ";

4. As stipulated in Law Number 48 Year 2009 on

Judicial Power in the third section of Article 29 of the Constitutional Court (See the proof of P-3) states:

1) The Constitutional Court the authority to hear at the first and The last decision is final for:

a. test the laws against the Constitution of the State Republic of Indonesia Year 1945;

b. State agency the authority to decide disputes which authority granted by the Constitution of the State Republic of Indonesia Year 1945;

c. decide upon the dissolution of political parties;

d. decide disputes concerning election results; and

e. other powers granted by law.

2) In addition to the authority referred to in paragraph (1), the Court The Constitution shall give a decision on the opinion of the House of Representatives The people that the President and / or Vice President is alleged to have done

violation of law in the form of treason against the state, corruption, bribery, other felonies or moral turpitude, and / or no longer qualify as President and / or Vice President.

3) The composition, powers and procedural law of the Constitutional Court as referred to in paragraph (1) shall be regulated by the Act.

4) Organization, administration, and finance at the Constitutional Court Under the power and authority of the Constitutional Court.

5. Whereas, pursuant to the provisions above, the Constitutional Court have the right or authority to perform the testing undang4 laws against the Constitution which is also based on Article 10 paragraph (1) of Law Number 24 Year 2003 concerning Constitutional Court (See the proof of P-4) which states:

"The Constitutional Court the authority to hear at the first and last the decision is final for: (a) test the laws against 1945 Constitution ".

6. That the authority to test laws against the 1945 Constitution was based in Article 51 of Law Number 24 Year 2003 concerning the The Constitution states:

1) Petitioner is a party that considers the rights and / or authority impaired by the enactment of constitutional law, namely:

- a. individual Indonesian citizen;
- b. customary law community unit along still alive and in accordance with the development of society and the principle of a unitary state Republic of Indonesia as regulated in the Act;
- c. public or private legal entities; or
- d. state institutions.

2) Applicant shall describe clearly in his petition on rights and / or authorities referred to in paragraph (1);

3) In the application referred to in paragraph (2), the Applicant shall clearly outlines that:

- a. establishment of the Act do not comply based on the 1945 and / or;
- b. substance of the paragraph, chapter, and / or the Act considered contrary to the 1945 Constitution;

7. Article 5 of Law Number 10 Year 2004 on the Establishment Legislation (see the proof of P-5). In establishing the rules Legislation should be based on the principle of Establishment Good legislation that includes:

- a. clarity of purpose;
 - b. institutional or organ forming the right;
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- c. meteri fit between the type and the load;
 - d. can be implemented;

e. versatility and kehasilgunaan;

f. formulation and clarity;

g. openness.

8. Article 6 of Law Number 10 Year 2004 on the Establishment of Legislation, paragraph (1), "the substance of the rules of legislation contains principles:

a. aegis;

b. humanity;

c. nationality;

d. kinship;

e. Unity in Diversity;

f. justice;

g. equality in law and government;

h. balance, harmony and alignment.

9. Article 7 of Law Number 10 Year 2004 on the Establishment of Legislation stipulates that the hierarchical position higher than the 1945 Act, therefore every provision of an Act must not conflict with the Constitution of the Republic of Indonesia Year 1945, then such provision may be petitioned for review through the testing mechanism Act.

10. Whereas under the provisions of the above laws, the Constitutional Court has the authority to examine, hear and decide the application of test materially.

II. The Status Law (Legal Standing) and Constitutional Interests of Applicant

11. Whereas recognition of the rights of every citizen of Indonesia to propose a petition for judicial review of Law against the 1945 Constitution is one indicator of the positive development of the state administration reflects the lack of progress for strengthening the principles of state law.

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12. See the statement that the Constitutional Court of Indonesia, among other functions as the "guardian" of "constitutional rights" of each citizen of the Republic of Indonesia. The Constitutional Court is the body that maintains judicial human rights as constitutional rights and rights of every citizen. With this awareness Applicant then decided to apply the material of Article 113 paragraph (1), paragraph (2), and paragraph (3) of Law Number 36 Year 2009 on Health contrary to the spirit and soul of the Preamble (Preamble) and clauses contained in the 1945 Constitution;

13. Whereas Article 51 of Law Number 24 Year 2003 concerning the Constitution states:

1) Petitioner is a party that considers the rights and / or authority impaired by the enactment of constitutional law, namely:

a. individual Indonesian citizen;

b. customary law community unit along still alive and in accordance with the development of society and the principle of a unitary state Republic of Indonesia as regulated in the Act;

c. public or private legal entities; or

d. state institutions.

2) Applicant shall describe clearly in his petition on rights and / or authorities referred to in paragraph (1).

3) In the application referred to in paragraph (2), the Applicant shall clearly outlines that:

a. Establishment of the Act does not comply with the provisions under The 1945 Constitution; and / or;

b. substance of the paragraph, chapter, and / or the law considered contrary to the 1945 Constitution;

14. Whereas Article 57 of Law Number 24 Year 2003 concerning the The Constitution states:

1) Decisions of the Constitutional Court ruling stating that the injunction material content, articles, and / or parts of the Act against

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with the 1945 Constitution, the material content of the paragraphs, chapters, and / or the Law Law does not have binding legal force.

2) The decision of the Constitutional Court ruling stating that the injunction establishment of the Act does not comply

legislation under the 1945 Act

it does not have binding legal force.

3) The decision of the Constitutional Court to grant compulsory published in the Official Gazette within a period of at least 30 (three twenty) days from the date of the decision.

15. That the Petitioner, who is also a mandate to represent some village head and village residents who have the Waterford District the same interests, who is also a who is concerned about pertembakauan and clove Indonesia because of his background of as Waterford County citizens who are

producing the world's finest tobacco and tobacco-producing Srintil

Clove, where tobacco and clove County Waterford

a pedestal and hope and drive the economy

Waterford County community;

16. That the applicant is an individual citizen of the Republic of Indonesia under the provisions of legislation in Indonesia either

based on the 1945 Constitution and the legislation has provided

representativeness mandate through a Parliament member and one constitution

his job was to establish the Act (legislation). That members of the House

as a representative of the applicant institution should implement

duties and obligations in the formation of legislation with

good, true, and are responsible in accordance with existing regulations.

By not doing the duties and obligations of the Parliament in the process of good and is related to the applicant a quo then it is clear that the applicant which has given its mandate to members of Parliament have been potentially his constitutional rights;

17. That the applicant is an individual citizen of the Republic of Indonesia is a citizen taxpayers. So it can be viewed

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have an interest in accordance with Article 51 of Law Number 24 Year 2003 on the Constitutional Court. This is in accordance with the adage no Taxation without participation and conversely no participation without tax. So that the rights and interests as well adrift with the process discussion of the Act a quo that has been financed by the state. Each process of drafting legislation products using state funds as well as for payment institutions, including parliament members who each year budgeted and charged to cost the country where the income one state's money comes from tax revenues that have been Petitioner also paid by the cigarette excise tax which amounted to approximately Rp. 64 trillion, including tax from tobacco and clove farmers sweat Indonesia and cigarette factory workers and other concerned parties;

18. That with the enactment of Law Number 36 Year 2009 on Health Article 113 paragraph (1), paragraph (2), and paragraph (3) has been resulting in losses and potentially violated by Petitioner constitutional rights of tobacco farmers, clove Indonesia, and the cigarette factory workers and other concerned parties. Applicant has a mandate of some of the village chief and Waterford District Community, Applicant has the paddy fields of approximately 2 hectares, which the often planted with rice cultivators Tobacco Wetland type, then by enactment of Section 113 in particular paragraph (2) and paragraph (3), then the Applicant see grow tobacco there is no legal certainty in Indonesia, Applicants with other people so that tobacco growers feel misgivings and thus Petitioner will incur a loss material if it does not grow tobacco. By planting tobacco Applicant income is much better than the applicant to plant rice or cassava or other crops, because the soil structure climate and humidity levels in the Waterford District was created by God S.W.T. such a way that produces the world's best tobacco Tobacco Srintil called. Tobacco Srintil only exist in the area Sindoro mountains, cleft, and Prau, and the problem of our material loss

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convey in the form of rice paddies and peasant farmers' incomes mountains (data attached);

19. That based on the description above, it is clear the Petitioner has met the quality as well as good capacity as Applicant "individual citizens

Indonesia "in order to test the Act of 1945 as provided for in Article 51 letter c of Law Number 24 Year 2003 regarding the Constitutional Court. Therefore, it is also clear Petitioner have the legal rights and interests represent the public interest to apply for a test of Act No. 36 of 2009 on Health Article 113 paragraph (1), paragraph (2), and paragraph (3) of the Constitution 1945.

III. Reasons Application Testing Health Act

A. Opening (Preamble) of the 1945 Constitution guarantees social justice for all the people of Indonesia

20. After the constitutional reform, the 1945 Constitution contains provisions more regarding human rights and democratic principles such as in the tradition of liberal states. However, at the same time, the Constitution Post-1945 reform also includes stricter provisions regarding economic and social welfare as in the traditions of the countries socialist. Thus, it can be said that the 1945 Constitution does not sematamata is a political document, but also an economic document.

The 1945 constitution is not only political but also economic constitution.

As an economic constitution, the 1945 Constitution should be understood as a policy

The highest economy that must be used as a reference and referral in develop any national economic development policy.

Economic policies referred to, in order to be binding and keberlakuannya coercive always poured in the form of Law Act and its implementing regulations. All rules should not be conflict with higher regulations. Act should not be contrary to the 1945 Constitution. If the conflict is against the Law Laws and regulations referred to are available mechanism
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to test it through the judicial process and judicial review if it proves conflict may otherwise not have binding legal force.

purpose and nature of the constitution;

Among the jurists, in general, understood that the law has three main objectives, namely (i) fairness (justice), (ii) certainty (Certainty or zekerheid), and (iii) the usefulness or usefulness (utility).

Justice commensurate with the balance (balance, mizan) and proper (Equity) and equity (proportionality). The relevant legal certainty with order (order) and order, security-related and tranquility. Meanwhile, usefulness or usefulness expected to ensure that all those values will bring happiness and peace to live together.

Therefore constitutional law itself is considered the most high level, then the purpose of the constitution as the supreme law was also to achieve and realize the ultimate goal. Objectives that are considered The highest were: (i) fairness (justice), (ii) order (order), and (iii)

embodiment of the ideal values such as independence and freedom (freedom) or well-being and prosperity (prosperity and welfare) together as defined as the goal state by the founders of the state (The founding leaders) or the framers of the Constitution (the Framers of the constitution), (Prof. Dr. Jimly Asshiddiqie, SH, "Economic Constitution") (vide evidence of P-6).

Opening (preamble) of the 1945 Constitution mandates, then rather than it to form a government of Indonesia and the entire native country blood Indonesia and to promote the general welfare, to educate life of the nation, and participate in the establishment of world order based on independence, abiding peace and social justice, then drafted Indonesia's national independence in the Constitution, which formed in an arrangement of a sovereign nation the people of the Republic of Indonesia with is based on the Belief in God Almighty, humanity that is fair and the civilized, the unity of Indonesia, and Democracy guided by the wisdom

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wisdom of deliberation / representation, and the realization a social justice for all people of Indonesia;

Mandate the opening of the 1945 Constitution, asserted that the state Indonesia based on justice, if we associate with the Law

Number 36 Year 2009 on Health, Chapter VI of Part Seven of the Twelve, Security addictive substances Section 113:

(1) Securing the use of materials containing addictive substances are not redirected disturb and endanger the health of individuals, families, society, and environment.

(2) addictive substances referred to in paragraph (1) include tobacco, containing tobacco products, solid, liquids, and gases that are addictive use can cause harm to himself and / or surrounding community.

(3) The product, distribution, and use of materials containing addictive substances must meet the standards and / or requirements set.

Article 113 paragraph (1), paragraph (2), and paragraph (3) of the above conflicting with the principle of justice because only lists one type of plant

tobacco crop farming is considered to cause harm to

himself and / or surrounding community, while the marijuana plants, which prohibited are not included in Law No. 36 of 2009

of Health and also many other agricultural crops

who also have an impact not good for health, such as coffee and

so on. In the general provisions of Article (1) of Law Number 36

Year 2009 on Health also no one who calls ayatpun

terms of addictive substances, but later raised a special section of Article 113

paragraph (1), paragraph (2), and paragraph (3), as opposed to the principle of justice;

Applicants need to say that the actual determination of the Act

Number 36 Year 2009 on Health, Article 113 paragraph (1), paragraph (2), and

subsection (3) is imposed by the Government, because Article 113 will be used as an umbrella law or legal basis by the Government to gave birth to the draft Regulation of the Government of the Republic of Indonesia concerning safety of tobacco products as addictive substance for health, which

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actually already been discussed by the Government but later postponed discussion because of the loud protests of tobacco farmers and Indonesian clove. After the applicant look at the articles of the draft Regulation of the Government of the Republic of Indonesia concerning product safety tobacco as an addictive substance for health as follows:

General Provisions

Article 1

paragraph 2 is an addictive substance of tobacco, products that contain tobacco, solids, liquids, and gases which, if the consumption can be lead to dependence.

verse 9 Advertising and promotion of tobacco are all forms of communication commercial, advice or action directly or indirectly aiming directly, affects, or may have an impact encourage the use of tobacco products.

Paragraph 10 hereinafter Sponsor sponsorship of tobacco products is any form of contribution, directly or indirectly, in funds or other forms, in a variety of activities, agencies or individuals with the aim of influencing through the promotion of products tobacco or tobacco product use.

Article 9

Any person prohibited from selling tobacco products:

- a. Using the machines themselves intellectually,
- b. To children under the age of 18 years;
- c. To pregnant women; and
- d. At retail (per rod)

Part Four

Advertising, Promotion and Sponsorship

Article 10

Tobacco and all tobacco products as addictive substances are prohibited to be advertised and / or promoted in all media types include outdoor media, electronic media, online media, print media, and other media outlets.

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Article 11

Any person who produces and / or importing the product Tobacco into Indonesian territory forbidden to:

- (1) Offering or providing free of charge, discounts or gift of tobacco products or other products include tobacco products or trademarks of

resemble tobacco products,

(2) Using or cigarette brand logo and the products or goods not smoking, and

(3) Become a sponsor of an activity, agency and / or individuals,

(4) Conducting corporate social responsibility aimed at to promote or introduce tobacco products to the community.

Article 12

Any person prohibited from broadcasting and describes the form a picture or photo, display, show or reveals people are smoking, showed stem cigarettes, smoke cigarettes, cigarette packets, or in connection with tobacco products as well as any information that raises perceptions of tobacco products in printed media, media electronic and online media.

From the description of the articles mentioned above, it is clear that the government impose a policy without looking at the impact of losses experienced by tobacco and clove farmers Indonesia. Plan Regulation of the Government of the Republic of Indonesia concerning product safety tobacco as an addictive substance for health are discussed to replace Government Regulation Number 19 Year 2003 concerning the protection of cigarettes for health in which:

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Part Five

Advertising and Promotion

Article 16

(1) Advertising and promotion can only be done by any person that produce cigarettes and / or which include cigarettes into the territory of Indonesia.

(2) Advertising as referred to in paragraph (1) can be performed in electronic media, print media, or outdoor media

(3) Advertising in electronic media referred to in paragraph (2) can only be done at 21:30 o'clock until o'clock 05:00 local time.

Article 17

Advertising material referred to in Article 16 paragraph (2) prohibited from:

- a. Stimulate or encourage people to smoke;
- b. Describe or suggest that smoking provide health benefits;
- c. Demonstrate or describe the form of images, writing or a combination of both, packs of cigarettes, tobacco or people are smoking, or lead to a

was smoking;

- d. Directed against or show in pictures or writing or a combination of both, children, adolescents, or pregnant women;
- e. Lists the name of the product in question is smoking;
- f. Contrary to prevailing norms in society.

Article 18

(1) Any advertising on electronic media, print media and outdoor media must include a warning of the dangers of smoking to health.

(2) Inclusion of warning as referred to in paragraph (1) must be written in clear, so easy to read, and in size is adjusted proportionally to the size of the ad.

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Article 19

Each of which produces cigarettes and / or put cigarettes into the Indonesia banned the promotion by giving freely or gifts of cigarettes or other products where stated that the trademark is a cigarette.

Article 20

Sponsor activities in the framework of advertising and promotion undertaken by the every person who manufactures cigarettes and / or that include cigarette into the territory of Indonesia, can only be done with fixed follow the terms of advertising and promotion as stipulated in This Government Regulation

Article 21

(1) Any person who manufactures cigarettes and / or put cigarettes into Indonesian territory in doing advertising and promotion of cigarettes at a activities must meet the requirements referred to in Article 16, Article 17, Article 18, Article 19 and Article 20.

(2) The head or party responsible for an activity must reject promotion of cigarettes that do not meet the Article 16, Article 17, Article 18, Article 19 and Article 20.

Policy of the Government to amend Government Regulation No. 19

Year 2003 on Cigarettes for Health Security Plan amended

Government Regulation on Protection of tobacco products as substances addictive to health by using the legal umbrella of Article 113 paragraph (1), paragraph (2), and paragraph (3) of Law Number 36 Year 2009 on Health will be dealing with the Decision on Case No.

6/PUU-VII/2009 of Law Number 32 Year 2002 concerning

Broadcasting of the 1945 Constitution. Constitutional Court ruling means strengthen the Law Number 32 Year 2002 on Broadcasting

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including the strengthening of Government Regulation Number 19 Year 2003 on Cigarettes for Health Security.

Chairman of the Constitutional Court would please deign what Petitioner convey the above into consideration in taking decision, for the sake of legal certainty in Indonesia, that tobacco plant is the right of farmers to hold life to achieve a prosperous society.

Materials that contain addictive substances are not the same as Narcotics or Psychotropic therefore not be included in the category same class or psychotropic Narcotics. Thus, in legal treatment of both categories must be different, ie, materials containing addictive substances handling is done by a process control while on Narcotic Drugs or Psychotropic workarounds is through the process of prohibition, because it is clearly a drug or ingredient forbidden.

With the enactment of Law Number 36 Year 2009 on Health Article 113 paragraph (1), paragraph (2), and paragraph (3), on October 13, 2009, it will be the psychological impact and will result in loss material and the lack of legal certainty in the continuity of life for tobacco and clove farmers Indonesia, reduced labor agriculture, labor / cigarette factory workers, and other Related Parties. Grow tobacco and cloves in Indonesia, will be faced with various interests that have been protected by the Act. Appropriate with the purpose and nature of the constitution which guarantees the existence of justice (Justice), certainty (certainty or zekerhaid), and the usefulness or usefulness (utility), it is clear that Article 113 paragraph (1), paragraph (2), and subsection (3) contrary to the 1945 Constitution;

B. Form and Sovereignty Chapter I, Article 1 UUD 1945, Ensure Sovereignty Being in People's Hands

21. CHAPTER I

FORM AND SOVEREIGNTY

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Article 1

(1) of the Unitary State of Indonesia is a Republican form.

(2) Sovereignty belongs to the people and carried out according to Law Constitution .***)

(3) State of Indonesia is a state law .***)

The above article guarantees the sovereignty vested in the people, 1945 Constitution should be obeyed by anyone, including the Government the sovereign. Naturally, if the people of tobacco farmers has sovereignty in any field, including plant species tobacco plants, tobacco seeds from seeding process, select the type of tobacco seed, tobacco plant which is then processed through a process long enough to be raw material kretek cigarettes is second to none in the world, in which certain uses of clove cigarettes that contain eugenol. Sovereignty of the people should also contribute to determine

and excluded if there is discussion of changing the law to government regulations related to mandatory farmers pertembakauan tobacco included in the process of discussion, because its impact will definitely come to the tobacco and clove farmers Indonesia. In a situation of global economic power perspective of today, government should make the strengthening of the Act and regulations government that stands on its own feet without foreign intervention, because if there is economic hardship or economic crisis, the Government own or tobacco farmers who will finish it, it is impossible foreign parties are genuinely helpful, there must be the country's national interests them.

Special Article Article 113 paragraph (1), paragraph (2), and paragraph (3) of Law Health Number 36 Year 2009 on Health, shows a evidence that the government does not favor the interests of tobacco farmers and a special chapter is contrary to the 1945 Constitution;

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C. Chapter XA **) Human Rights Article 28A, Article 28I of the 1945 Constitution, Guaranteeing Human Rights for All People Indonesia:

1. Right To Life For All People Indonesia
2. Ensure the Right to Culture in the 1945
22. Right To Life For All People Indonesia

CHAPTER X

Citizens and Residents **)

Article 27

- (1) All citizens equal before the law and government and shall uphold the law and government no exception.
- (2) Every citizen has the right to decent work and livelihoods for humanity.

Chapter XA **)

Human Rights

Article 28A

Every person has the right to live and to defend life and life .**)

Article 28I

- (1) The right to life, the right not to be tortured, the right to freedom of thought and heart conscience, freedom of religion, freedom from enslavement, recognition as a person before the law, and the right to be prosecuted on the basis of legal applies retroactively are human rights that can not be reduced in any circumstances **)
- (2) Every person entitled to be free from discriminatory treatment of any basis and are entitled to protection against treatment that discriminatory **)
- (3) cultural identity and rights of traditional communities be respected in

the times and civilizations. **)

(4) The protection, promotion and enforcement of compliance with human rights is the responsibility of the state, especially the government .**)

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(5) To uphold and protect human rights in accordance with principles of a democratic constitutional state, the exercise of rights humans are guaranteed, regulated and set forth in regulations legislation **)

The right to life protected by the Constitution as in chapter mentioned above, then the lives of farmers as well as tobacco, cloves, Indonesia and the factory workers and other parties associated with the pertembakauan also have the same right to life so that planting tobacco and clove farmers is an obligation to continue to thrive. In tobacco plants and plant species cloves in Indonesia is not only to life but has is a plant culture because it was handed down from generation to generation where the condition of the structure of soil, weather, climate, land elevation, the level moisture, and plant seeds are very supportive. Cultural identity and existence of traditional society is also protected by the 1945 Constitution, so that Special chapters are included in Law No. 36 of 2009 on Health, namely Article 113 paragraph (1), paragraph (2), and paragraph (3) very contrary to the 1945 Constitution; Thus Article 113 paragraph (1), paragraph (2), and paragraph (3) of Law Number 36 The year 2009 which is a special article clear to inhibit or reduce tobacco plant and it was contrary to opening (preamble) and the articles of the 1945 Constitution, because Article 113 paragraph (1), paragraph (2), and paragraph (3) is in addition to contradict, nor is there synchronization and harmonization with the Law No. 12 of 1992 of Plant Culture System, Law No. 39 of 1999 on Human Rights.

23. Culture or Cultural Rights Guaranteed by the 1945

Tobacco plants are plants that have been handed down from generation to generation since the colonial era and until the Nederlandse Indie tobacco farmers are now getting treatment less well than Government, began to colonial times until now, the natural have been independent even in the nature of reform. The process of planting tobacco

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until it becomes a staple through a long process, even first there is the process of making tobacco the way digarang or in tobacco drying process by means of a material heated by the fire wood called tobacco grate, until now the process is still there, but not so much. Grate from the tobacco then switch to kranjangan tobacco or tobacco process in a way drying using the sun's rays are then inserted in kranjang tobacco.

Sustainability is continuously carried out from generation to generation makes a culture or a culture with enough creativity high not only produce the best tobacco plants but also the way kranjang manufacture, rigen (where tobacco drying), cutting tools traditional and modern tobacco, showed a noble culture, and also with the culture of tobacco farmers have been producing products Srintil tobacco and other tobacco types that are not only for interests of farmers, but also turned out for the interests of Government, nation and state, with the results of a high enough tax less more than Rp 64 trillion, including tax. The process of culture or cultural is the creativity of the tobacco farmers of the above should obtain legal protection and legal certainty of the Government Government rather than actually making a special section that is Pasal113 paragraph (1), paragraph (2), and paragraph (3) of Act No. 36 of 2009 on health as opposed to the 1945 Constitution. D. Chapter XIV of the National Economy and Social Welfare *****) Constitution 1945 Assuring Democracy Economy for All People Indonesia

24. Article 33

- 1) The economy is structured as a joint effort based on the principle familial.
- 2) The branches of production that are important for the state and which controls livelihood of the people controlled by the state.

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- 3) Earth and water and natural resources contained therein are under by the state and used for the greatest prosperity of the people.
- 4) held a national economy based on democratic economy with the principles of togetherness, efficiency with justice, sustainability, environmental independence, and balancing economic progress and national unity.
- 5) Further provisions concerning the implementation of this Article shall be in the law.

Article 34

- 1) The poor and neglected children maintained by the state.
- 2) The state developed a system of social security for all citizens and empower the weak and unable to fit with human dignity.
- 3) The State is responsible for the provision of care facilities health and public service facilities it deserves.
- 4) Further provisions regarding the implementation of this article in the legislation.

According Soeharsono Sagir, the economy of every country must be run according to the particular system. This type of economic system adopted by Indonesia as cornerstone of development from time to time is the System of Economic Democracy (SEK). In this system, sovereignty in the economic field in the hands of the people and therefore people's economy is closely related to

the idea of economic democracy is understood that no other sovereignty in the economic field. Objectives of the System of Economic Democracy is liberation of people's lives from poverty, ignorance, dependence, unfair treatment, environmental damage and the anxiety of looking at the future. Therefore, the national development policies should not out of the principle of economy which, according to Soeharsono Sagir, reflected in the principle of triple track development, which is pro-poor, pro-job, and pro-growth.

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In implementing these three principles, there are six benchmarks which can be used to assess whether or not a process managed development, namely:

(I) free people from poverty to economic growth quality.

(ii) free people from ignorance and terbedayakan be resource human (human capital) are productive;

(iii) free people from unemployment to work creatively and productively to increase their own income and others;

(iv) The State is free from dependence on foreign debt;

(v) the State is free from foreign exchange shortages because the value of exports exceeded imports; and

(vi) The State is free from damage to the ecosystem so that development can developed in a sustainable manner. (Prof. Dr.. Jimly Asshiddiqie, SH, "Economic Constitution").

According to the expert opinion of experts who convey the above-mentioned petition, shows how strong the constitution protects people in various life in the end to achieve the welfare of a the state.

State of Indonesia is a country rich in natural resources, including agriculture where one of the world's best tobacco producers Waterford is called Tobacco Tobacco and Tobacco Srintil Madura should be preserved and maintained that its preservation, continuance as a side dish for kretek cigarettes, which is Indonesia typical cigars including materials. Tobacco industry that absorbs Overall tobacco Tobacco Indonesia including Waterford, Madura Tobacco, and tobacco from other parts of Indonesia as well as cloves, and also absorb labor Indonesia approximately 30 million people, ie tobacco farmers, factory workers, artisans tobacco, basket maker tobacco, rigen makers, hawkers selling cigarettes, and other concerned parties.

That the paper company, which manufactures paper began to cigarete, paper for perpak, OPM sugar film to wrap, aluminum foil

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foil, and the colt foil to wrap it, press the paper to wrap cigarettes, paper for the ball and cardboard boxes of cigarettes.

Tobacco industry that are characteristic of Indonesia must use Tobacco and Tobacco Waterford Madurese who have characteristics and specific distinctive aromatic clove cigarettes is a side dish for the elusive successors and supported by the tobacco from other areas as well using clove all over Indonesia.

Like what the applicant convey the above shows that the 1945 Constitution to protect the survival of the people of Indonesia, especially about the sustainability of economy and associated with the process planting tobacco plants need to obtain assurance law so that the continuity of life of tobacco and clove farmers Indonesia can be sustainable in order to fulfill his life reach the standard of living. Thus Article 113 paragraph (1), paragraph (2), and paragraph (3) Law Number 36 Year 2009 on Health, which is special chapter to inhibit and reduce crop products tobacco which resulted in material loss and tobacco farmers Indonesia as kretek clove cigarettes and certain tobacco use Indonesian clove and chapter is contrary to the 1945 Constitution.

E. Law Number 36 Year 2009 on Health of Article 113 paragraph (1), paragraph (2), and paragraph (3) the lack of synchronization and harmonization by Act No. 12 of 1992 on the System of Cultivation Plants, Law Number 39 Year 1999 on Human Rights Human and Law Number 13 Year 2003 on Employment

25. Petitioners say that the type of crops are protected with Act No. 12 of 1992 on Plant Cultivation System

(See the proof of P-7), related the following article:

Article 2

System of agricultural crops as part berasaskan benefits, sustainable, sustainable.

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Article 3

Cultivation system aims to:

- a. improve and expand the diversification of crops, in order to meet the needs of food, clothing, shelter, health, industry domestic and export enlarge:
- b. increase farmers' incomes and living standards:
- c. encourage the expansion and equity opportunities and job opportunities.

Article 4

The scope includes the cultivation system of production activities until the post-harvest.

Article 5

(1) To achieve the objectives referred to in Article 3, government:

- a. cultivation development plan in accordance with stages of national development plans;
- b. set crop development areas;
- c. regulate the production of certain crops based on national interest;
- d. create conditions that support the role of the community.

(2) In implementing the provisions referred to in paragraph (1), Government attention to the interests of society.

Article 6

(1) Farmers have the freedom to determine the choice of plants and peribudidayanya.

(2) In applying the freedoms referred to in paragraph (1), farmers are obliged to participate in realizing the plan development and production of crop cultivation, as mentioned in Article 5.

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(3) If the option referred to in paragraph (1), can not materialize because of the provisions of the Government, the Government is obliged to seek to obtain the concerned farmers guarantee a certain income.

(4) The provisions referred to in paragraph (3) shall be further Government Regulations.

Law Number 12 Year 1992 concerning Cultivation System

Clearly protect crop plants including tobacco plants, in this case the government with only lists one type of plant tobacco on Law Number 36 Year 2009 on Health

Article 113 paragraph (1), paragraph (2), and paragraph (3), then the Government has done conflict with a sense of justice against this type of tobacco plants a gift from Allah, God Almighty. Tobacco

Waterford called Srintil Tobacco is the best tobacco world and also the Madura Tobacco is a side dish for clove cigarettes Indonesia, should get protection from the Government. As

Applicant questioned why other types of plants that have an impact not good for health is not regulated in a special article in Law Health Act. When observed the Law Number 36 Year 2009 on Health, Article 113 paragraph (1), paragraph (2), and paragraph (3), not the synchronization and harmonization with the Law Number 12 Of 1992 on Plant Cultivation System, such as the Petitioner convey the above.

26. Petitioner needs to convey that planting agricultural crops protected by Law Number 39 Year 1999 on Human Rights Men (vide evidence of P-8).

In Chapter I General provisions Article 1 mandates:

1. Human Rights is a set of rights inherent in the nature

and human existence as a creature of God Almighty and His is a gift that must be respected, upheld and protected by state law, government, and anyone for respect and protection of human dignity.

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2. Basic human obligation is a set of obligations which, if not carried out, not have been possible and upholding human rights people.

3. Discrimination is any restriction, harassment, or exclusion which directly or indirectly based on the distinction humans on the basis of religion, ethnicity, race, ethnic group, class, status social, economic status, gender, language, political beliefs, which result in a reduction, or elimination of recognition irregularities, implementation or use of human rights and fundamental freedoms in both individual and collective life in politics, economic, legal, social, cultural, and other aspects of life.

Chapter II

Basic Principle Principle

Article 2

Republic of Indonesia recognizes and upholds human rights humans and basic human freedoms as the right that by nature attached and not separate from humans, which should be protected, respected, and enforced by warnings of human dignity, well-being, happiness, and intelligence and justice.

Chapter III

Human Rights And Fundamental Freedoms of Man

Section unity

Right to Life

Article 9

(1) Every person has the right to life, survival, improve their standard of living.

(2) Every person has the right to live peaceful, secure, peaceful, happy, physical and spiritual prosperity.

(3) Every person has the right to good environment and healthy.

Just like the applicant to convey reasons mentioned above that Law Number 36 Year 2009 on Health of Article 113 paragraph

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(1), paragraph (2), and paragraph (3) also there is no synchronization and harmonization with Act No. 39 of 1999.

27. Applicants need to say that the plant type tobacco plants done by tobacco and clove farmers Indonesia clearly protected 1945 Constitution as well as labor / cigarette factory workers are protected by articles of the Law Number 13 Year 2003 on Employment (see the proof of P-9) as follows:

In weighing points:

- a. That national development carried out within the framework of development Indonesia fully human and community development Indonesia entirely to build a prosperous society, just, prosperous, Equitable, both material and spiritual, based on Pancasila and the 1945 Constitution.
- b. That in the implementation of national development, labor has a role and a very important position as a principal and development goals.
- c. That in accordance with the role and position of labor, is required manpower development to improve the quality of labor and participation in the development and improvement of protection workforce and their families in accordance with the dignity of humanity.
- d. That the protection of labor is intended to ensure fundamental rights of workers / laborers and guaranteeing equal opportunity and treatment without discrimination on any basis to embody welfare workers / laborers and their families to remain attention to the development progress of the business world.

CHAPTER II

BASIS, PRINCIPLE, AND PURPOSE

Article 2

Manpower development is based on Pancasila and the Constitution of the Republic of Indonesia Year 1945.

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Article 3

Development of employment held on the principle of integration through cross-functional coordination with national and regional sectoral

Article 4

Manpower development aims:

- a. empower and utilize manpower optimally and humane.
- b. achieve equal opportunity employment and labor supply in accordance with national and regional development needs.
- c. provides protection to workers in realizing welfare, and
- d. improve the welfare of workers and their families.

CHAPTER III

Equal Opportunity and Treatment

Article 5

Every workforce has equal opportunity without discrimination to get a job.

Article 6

Each worker / laborer is entitled to equal treatment without

discrimination from employers.

In connection with the foregoing clearly tobacco farmers and labor / workers receive equal treatment before the law, then the Article 113 paragraph (1), paragraph (2), and paragraph (3) of Law Number 36 Year 2009 on the Health 1945 Constitution and the absence synchronization and harmonization with the existing provisions in the Act Law Number 13 Year 2003 on Manpower.

IV. Conclusion

1. 1945 Constitution, guarantees the existence of fairness (justice), certainty (or Certainty zekerheid) and the usefulness or usefulness (utility).

2. With the enactment of Law Number 36 Year 2009 on Health, on October 13, 2009, it will be the psychological impact
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and will result in material loss and the lack of certainty law in the continuity of life for tobacco and clove farmers Indonesia, means the planting of tobacco and cloves in Indonesia will dealing with the various interests that have been dilindungi by Law The Act. In accordance with the purpose and nature of the constitution which guarantees of fairness (justice), certainty (certainty or zekerheid) and usefulness or usefulness (utility), it is clear that Article 113 paragraph (1), paragraph (2), and paragraph (3) of Law Number 36 Year 2009 on Health against the 1945 Constitution;

3. Article 113 paragraph (1), paragraph (2), and paragraph (3) of Law Number 36 Year 2009 about the lack of synchronization of Health and harmonization with other laws (Law Number 10 Year 2004 on Establishment of Legislation, Law Number 12 Of 1992 on Plant Cultivation System, Law No. 39 Year 1999 on Human Rights, and Law No. 13 Year 2003 on Manpower).

4. To declare that Article 113 paragraph (1), paragraph (2), and paragraph (3) Act No. 36 Year 2009 on Health did not have the force of law binding.

V. Petition

Based on the descriptions above, the Applicant appealed to the Panel of Judges Constitutional Court to examine and decide upon the testing Law Number 36 Year 2009 on Health as follows:

1. Accept and grant the petition for judicial review of Law The applicant.

2. To declare that Article 113 paragraph (1), paragraph (2), and paragraph (3) of Law No. 36 Year 2009 on Health Law against Constitution of the Republic of Indonesia Year 1945, both in the opening (Preamble), Article 27, Article 28A and Article 28I, which means the violation of rights of human rights.

3. To declare that Article 113 paragraph (1), paragraph (2), and paragraph (3) of Law No. 36 Year 2009 on Health has no legal force

binding, then the Applicant pleaded Article 113 paragraph (1), paragraph (2), and paragraph (3) for otherwise not have binding legal force.

4. Injunction ordered the judges of the Constitutional Court grant the petition for judicial review of Article 113 paragraph (1), paragraph (2), and paragraph (3) Law Number 36 Year 2009 on Health of Law Constitution of the Republic of Indonesia Year 1945 to be loaded in The state news within a period of at least 30 (thirty) working days of the decision.

[2.2] Considering whereas to prove his arguments Petitioner submit documentary evidence of proof of P-1 through P-9 as follows:

1. Exhibit P-1: Photocopy of Law Number 36 Year 2009 on Health;
2. Exhibit P-2: Copy of the Constitution of the Republic of Indonesia 1945;
3. Exhibit P-3: Photocopy of Law Number 48 Year 2009 on Judicial Power;
4. Exhibit P-4: Copy of Law Number 24 Year 2003 on Constitutional Court;
5. Exhibit P-5: Copy of Law Number 10 Year 2004 on The formation of legislation;
6. Exhibit P-6: Copy of Book "Constitutional Economics" by Prof.. Dr. Jimly Asshiddiqie, S.H;
7. Exhibit P-7: Copy of Law Number 12 Year 1992 concerning Cultivation systems;
8. Exhibit P-8: Copy of Law Number 39 Year 1999 on Human Rights;
9. Exhibit P-9: Copy of Act No. 13 of 2003 on Employment;

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That to strengthen their arguments, in addition submit written evidence, Petitioner also filed a 10 (ten) Witness 7 (seven) people of Experts telah sworn and heard his testimony at the hearing on Tuesday, May 20 2010, Thursday, June 2, 2010, Tuesday, December 14, 2010, and Tuesday, February 8, 2011 which principally explains as follows:

Witness Applicant

1. H. Parmuji

That Witness surprised and concerned with the existence of Article 113 paragraph (1), paragraph (2), and paragraph (3) of Law Number 36 Year 2009 on Health because it limits the tobacco industry;

Tobacco has become the foundation of our ancestors and is a main income source (tobacco is also called "green gold");

Tobacco protected by the Act that affect plant

protected;

tobacco cultivation involves many parties, not just farmers

tobacco;

2. H. Mulyono

Witness is concerned that the main livelihood as farmers

tobacco is threatened;

3. Tri Yuwono

The majority of residents in the Village Kledung as tobacco farmers will

threatened loss of livelihoods;

If planting tobacco is prohibited in conflict with the program

government's poverty alleviation;

4. Karyanto

In Pamekasan 35 000 hectares of tobacco growers, in

Sumenep 28 000 hectares of tobacco growers, and in

Sampang District 18 000 hectares of tobacco growers;

In Pamekasan, Sumenep, and tobacco is Sampang

a commodity crop that has been long and also the plants down

generations that can not be separated by the liver where the farmers who died,

life, still grow tobacco;

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tobacco farmers can send their children to and sufficient

life;

If tobacco farmers can not or should not grow tobacco

will make even worse;

Witness ordered Farmers Pamekasan by saying, "Please

fought for the rights of farmers, including tobacco ";

5. Sumadi Danartono (Village Chief Wonolelo Sawangan Magelang)

In the village of Witnesses, 95% are farmers and at the time of the dry season, plants

that life is a tobacco plant is a plant

economic backbone of society;

6. Udi Revelation (Village Head Pagerejo Wonosobo)

In Wonosobo district that tobacco is a commodity

which 50% go to the manufacturers and 50% is a craft in

form of tobacco or tobacco asapan grate;

7. Subakir

All the villagers Witnesses are tobacco farmers which area

approximately 400 acres;

tobacco plants producing the best quality tobacco in the world that

Tobacco called Serintil. Tobacco Serintil are needed by

clove cigarette factories native Indonesia.

8. Agus Setyawan (Village Head Tretep)

Witness born and bred from his father who happened to be the result of tobacco

tobacco farmers;

□ witness feels dipojokan when Section 113 Health Act tobacco just mentioned.

9. dr.Subagyo

Concerned □ suffered a bump on the lower jaw surgery with the result of a malignant lymphoma or cancer of the lymph nodes;

Concerned □ heard, capturing the information handling or treatment of nano jerky to define therapeutic cigarette;

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□ Whereas, by modifying or processing of existing cigarettes, in There have value in the treatment or cure package, in a clinic conducted by jerky nano cigarette modifine therapy.

10. Allan Sulistiono

Witness □ diagnosed with stage 3 liver cancer;

Witness □ jerky therapy with tobacco use and the results was normal.

Petitioners' expert

1. Josi Ali Arifandi

□ That the planting of tobacco in Indonesia has been going on in the area a specific location and very little developed to field sites others, because of tobacco products that have been around since plantings have specific quality characteristics are known and the market consumers, so it can not be replaced with tobacco products of the planting in locations other land;

□ That tobacco is a huge source of revenue for farmers / planters on marginal land that is specified when the growing season (Dry season) of other plants have been unable to produce or value economic under tobacco;

That □ for the country, the tobacco industry has contributed excise duty, taxes and foreign exchange increased steadily from year to year, in 2008 reach the range of Rp. 57 Trillion;

2. Mukti Ali Imran

That □ addictive substances are classified or grouped into types narcotics, psychotropic and other addictive substances or often called drugs;

□ That based on the work of the effects of biological or drug classified into three namely:

1. Stimulants

Is a substance that stimulates the system so that the central requirement accelerate the processes in the body, such as increased heart rate, respiration and blood pressure. Stimulants make

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people become more alert and hide fatigue. Addictive substances

classified as stimulants include caffeine, nicotine, cocaine, and amphetamines;

2. Depresant

Depresant produces an opposite action of stimulants.

Depressants lower the awareness of the outside world and euthanize. Depressants slow down the body and brain, such as lowers blood pressure, body temperature, heart rate and contraction the muscle. Depressants used in medicine for therapeutic insomnia (difficulty sleeping) and quietness examples of alcohol and drugs tranquilizers such as babbiturat, opiada (morphine, heroin, codeine);

3. Hallucinogens

Hallucinogen is a substance that can mempengaruhi nervous system and cause halunisasi (fantasy). The user agent is listening or seeing something that was not real;

□ Whereas Article 113 paragraph (2) of Law Number 36 Year 2009

Addictive substances on safety has indirectly reduced meaning of addictive substances is limited solely and only on tobacco products derivatives in all phases (solid, liquid, and gas). Though tobacco is not the only substances that have addictive properties. In other words tobacco (nicotine alkaloid-containing compounds) or products containing tobacco in any phase (solid, liquid, and gas) substance is one of the many substances that are also addictive;

□ That material is addictive is not limited to tobacco;

Restrictions □ term addictive substance in tobacco alone just are not have directly reduced the meaning of addictive substances, and this provides sense of bias;

That □ to determine the effect of a substance addiction or comparison addiction to materials other materials, must go through an empirical study mengagabungkan factual data-qualitative approach, quantitative;

□ use of the word "addictive substance" in a material, preferably, or should be accompanied by klsifikasi of these addictive type,

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whether the stimulant, depressant, hallucinogen, and others so clearly for consumers;

3. Gabriel Mahal

□ Talking about legislation controlling tobacco or safety of tobacco as an addictive substance in Indonesia can not be separated from the global agenda of tobacco control, or a popular called anti-tobacco agenda. Because one important strategy in success of global anti-tobacco agenda is through policies national regulatory control / security of tobacco;

□ Nicotine from tobacco can not be patented because it comes from nature.

What can be patented is a nicotine delivery (nicotine delivery

device) and therapeutic compounds that contain nicotine as an ingredient

The main produced by multinational pharmaceutical corporations. In

Here lies one of interest to control or shut down

tobacco and cigarettes;

□ agenda of anti-tobacco campaign in Indonesia is not detached from global agenda. It can be seen from the support of foreign funds to succeed the anti-tobacco agenda. Disbursement of funds to any party recipient of the funds allocated for the implementation of the agenda each party beneficiary;

□ provisions of Article 113 of Law Number 36 Year 2009 on Health is one form of implementation of the Project Tobacco Free Initiative with the global anti-tobacco agenda in Indonesia national law;

At □ tobacco farmers, clove farmers, millions of people whose lives depend on the tobacco industry and other related industries, was livelihoods at risk of losing his life, due to the implementation anti-tobacco agenda with all regulations, when the state also threatened loss of state revenues from industrial sources tobacco, all of which are not covered nor are replaced by the Tobacco Free Initiative Project with all its anticorruption agenda tobacco, multinational pharmaceutical corporations, which do not

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employment and does not provide benefits for state revenue, busy counting profits from trading NRT medications, and was busy calculating the market opportunities for NRT exporting drugs;

Killing □ tobacco with all the industry in Indonesia, including other related industries, will lead to rising unemployment people of Indonesia. Every 10% increase in unemployment causes deaths rose to 1.2%, 1.7% of heart attacks and life expectancy reduced by 7 years.

4. Rinaldo Prima

□ Whereas Article 113 of Law Number 36 Year 2009 on Health can provide an understanding of "misleading", because a tendentious can form opinions and provide stigma that only contain the addictive substance in tobacco, whereas still very much the kinds of plants and products containing addictive substances;

Whereas the a quo article □ be discriminatory and can simultaneously create legal uncertainty, so contrary to the principle justice and the principle of equality in law and government;

Formation □ legislation should be guided or refers to the Law Number 10 Year 2004 on

Establishment Regulation Legislation. Very large possibility of conflicting provisions of article a quo or at least less in line with Law Number 10 Year 2004;

□ Whereas Article 113 of Act a quo that is "tendentious" mentions only the type of tobacco plant that contains a substance addictive have been also contains a formula that did not provide "Legal protection" for tobacco farmers. In contrast to discriminatory has provided legal protection to farmers who grow other crops that contain addictive substances;

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□ Whereas the provisions of Article 113 of Law Number 36 Year 2009 contrary to the provisions of Article 27 paragraph (1), Article 28D paragraph (1), Article 28F, and Article 28I paragraph (2) of the 1945 Constitution;

□ Whereas the provisions of Article 113 paragraph (2) of the Act a quo is very clear once the legal norm is one unit with the provisions of Article 113 paragraph (2) as required by item 58 and Appendix figure 62 of Act No. 10 of 2004. With words Other types of plants that contain addictive substances is just the type of plant mentioned in the provisions of Article 113 paragraph (2) of the Act a quo;

□ addition, experts also filed a written statement (attached).

5. Prof. dr. Moch Aris Widodo MS., SpFK., Ph.D

That phenomenon is caused disease □ genetic factors that interact with the cell environment;

That □ degenetik cause most diseases are multifactorial.

If there are genetic factors are environmental factors that no harm or eliminated it will not happen phenomenon

otherwise the disease if there are genetic factors, coupled with the factor or many cells that adverse environmental factors it would appear

phenomena of the disease. Smoking based on experimental evidence and clinical evidence can not be accused of causing a single cause pain because not all smokers with cancer

pulmonary or coronary heart merokokpun is that not can be exposed two diseases;

□ Tobacco in some ways similar to alcohol both materials it may be circulated freely in the market. What is different is the effect alcohol can cause acute kerancunan often lethal even death can occur not because of alcohol but because of the traffic accidents;

□ Burning tobacco leaf in cigarettes produce chemicals 4000 including nicotine. Nicotine causes an effect on neurons so a gain effects such as increased concentration,

relieve boredom and anxiety this effect takes place very rapidly approximately 30 minutes. Effects on neurons or brain nerve cause someone wants to smoke cigarettes again known as an addiction. Nicotine in the circulation cause effects on the nervous periper include increased heart rate and contractions and increase in blood pressure;

In addition to providing oral testimony, the expert also filed a written statement.

6. Sutiman B. Sumitro

Many people ask, will the issue of clove cigarettes is also part of multinational corporate scenario, experts also have expressed are similar. Expert kwatir this is already part of the strategy period term foreign tobacco industry. Currently short-term activity is the focus annexed the local tobacco industry began to square off switch "core business "(Sampoerna has been released to the Philip Morris and PT. Bentoel move the hand to the BAT, while PT Gudang Garam has begun square off with the business sector to strengthen the energy field as well as PT. Needle).

Expert really hope this nation has a good strategy and are comprehensive in the kretek this problem and propose as follows:

1. Conduct research to truly measure the impact of smoking especially clove. Experts looked at studies that have been done is still too partial and too based on results of studies in western countries / foreign. Need to have the data and conclusions is a real picture of the impact of smoking on society. Activity surveys and clinical trials should be conducted with a sample (respondents) size of tens of thousands of people with the distribution that includes most major ethnic groups in Indonesia. The nature of the problem is very complex and loaded with lots of interests, and involve the fate of tens of millions of people and hundreds of trillions of rupiah assets requires a national research program, conducted in

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carefully, thoughtfully, comprehensively covering all aspects of better life of health, education, social, cultural, psychological and economy with a clear bias to the interests of the nation;

2. The tobacco industry should be encouraged to have research units and adequate development with the aim to develop technology kretek cigarettes are healthier and healthier. Can Setra involving researchers resource-center in college existing and Research Institute. Research carried out can by using a new approach that is different scientific approach is the approach that is now done Nano

Science and Nano Technology. When this is done by sungguh-sungguh very likely will be a source of inspiration of the world.

7. Dr. dr. Jack Roebijoso, MSc

- Tobacco and nicotine are grouped in a material that can addictive effects, but the addictive impact on health (Medical, psychological and social), still fairly easy to overcome and not effect "addiction" such as narcotic substances. So with health service model that empowers the family doctor health and addiction problems caused by smoking can be controlled more proportional. This will not happen in health care model which liberalistik and socialistic as is currently occurring in Indonesia and other countries, so that they feel the need to limit the need to limit cigarettes in various ways;
- Technology cigarette industry has been and will be able to be developed by the Indonesia expert, so the impact of addiction and health can be minimized. Discoveries and technological advances impact control health than cigarettes (nano technology to filter cigarettes) and model health services that empower the community (family doctor ala Indonesia), will become a valuable commodity for the progress development of fabrication technology of cigarettes, medicine and health in 40 future economic and development interests health / medicine in Indonesia;
- health risk factors never singular and always multi-factor, thus giving "verdict" of tobacco or smoking is a cause primary (causal factor) for a variety of diseases and deaths;
- The role of health risk factors collectively or individually to can cause health problems required sufficient time long, so there is still a chance to educate and advocate health to reduce or eliminate the impact of risk factors health for the purpose of preventing the event of sickness and death of a certain diseases;
- Failure system organization and management of health services for individuals and families in the era of the old SKN (2004), has encouraged emerging and growing health care model for individuals more liberalistik (curative, expensive, exploitative) and socialist (curative, cheap, obscurantisme) in Indonesia;
- experimental studies in animal model experiments on risks smoking, not necessarily analogous occurs in humans, because different dose and duration of exposure to cigarette smoke and other multi-factor;
- Policy Act included in the Health chapter of tobacco is an addictive goods (with the classification of the impact of mild addiction) and allegations of cigarettes into the source (causal factors) of various diseases and

death in the world and Indonesia, as the basic policy of removing commodity tobacco and cigarettes, apparently still not right on target to Indonesia at this time;

Government policies do □ commodity elimination of tobacco and cigarettes by reason of the addictive substance and smoking have contributed to the onset of illness and death are still "partial", not comprehensive in the field of health policy, so the results not be in line with expectations and even be problems social, economic impact on health (morbidity, mortality), due to various causes (risk factors) other health will emerge

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in health research should also be accommodated in Law Laws and regulations;

□ Tobacco, cigarettes and even health impact control technologies Indonesia will become a mainstay of exports, in the future.

[2.3] Considering that at the hearing on May 20, 2010 Court

The government has heard the statement which essentially explains as follows:

APPLICATION OF APPLICANT

a. Whereas according to the Petitioner, the provisions of Article 113 paragraph (1), paragraph (2), and paragraph (3) Law Number 36 Year 2009 on Health, has been detrimental Petitioner's constitutional rights and potentially harm the tobacco farmers, Clove farmers and cigarette factory workers, because of the a quo provision has been gave rise to legal uncertainty and the feeling of anxiety for grow tobacco and cloves in Indonesia, which in turn can cause material loss if it does not grow tobacco, if compared with other agricultural crops to plant species.

b. Whereas according to the Petitioner, the provisions of a quo, causing injustice because only lists one type of crop tobacco plants are considered detrimental to its use and community around it (referred to as an addictive substance), while crops such as marijuana, coffee and lain lain (which also contains addictive substances) are not included / included in Law No. 36 of 2009 on Health.

c. Whereas according to the Petitioner, the provisions of a quo, is forced pemuatannya by the makers of the Act, in particular by the Government, the more a quo provision will be legal / legal basis by Government to give birth to draft Government Regulation (RPP) on Tobacco Products Security as addictive substances for Health as replacement of Government Regulation Number 19 Year 2003 on Security Cigarettes for Health.

d. In short according to the Petitioners a quo provision, has given distinction, treatment that is not fair to everyone, including Applicant

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as tobacco and clove farmers farmers in Indonesia, such a case

not fit for purpose and nature of the constitution which guarantees the existence fairness (justice), certainty (certainty or zekerheid) and the usefulness or usefulness (utility), therefore according to the Petitioners a quo provision considered contrary to the provisions of Article 27 paragraph (1) and paragraph (2), Article 28A and Article 28I and Opening (preamble) of the Constitution Republic of Indonesia Year 1945.

POSITION OF LAW (LEGAL STANDING) APPLICANT

In accordance with the provisions of Article 51 paragraph (1) of Law Number 24 Year 2003 regarding the Constitutional Court, stating that the applicant is a party who consider the rights and / or impaired by its constitutional authority enactment of the Act, namely:

- a. individual citizen of Indonesia;
- b. customary law community unit along still alive and in accordance with development of society and the principle of the Unitary Republic of Indonesia stipulated in the Act;
- c. public or private legal entities; or
- d. state institutions.

The above provisions asserted in explanation, that what is meant by "Constitutional rights" are rights set forth in the Constitution Republic of Indonesia Year 1945.

So for a person or a party may be accepted as an applicant who have legal status (legal standing) in a petition for judicial law-Law against the 1945 Constitution, it must explain and prove:

- a. qualifications in the petition a quo referred to in Article 51 paragraph (1) of Law Number 24 Year 2003 concerning the Constitution;
- b. rights and / or authorities referred to in the qualification that deemed to have been impaired by the enactment of the Act which were tested;
- c. constitutional rights and / or constitutional authority as a result enactment of the law petitioned for review.

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Furthermore, the Constitutional Court Decision Number 006/PUU-III/2005 and Number 11/PUU-V/2007 decision and subsequent decisions, has provide understanding and cumulative limits on constitutional rights and / or authorities arising from the enactment of a law-Act pursuant to Article 51 paragraph (1) of Law Number 24 Year 2003 on The Constitutional Court must meet 5 (five) provided that:

- a. the constitutional rights granted by UUD1945;
- b. that the Petitioner's constitutional rights are deemed by the Applicant has harmed by an Act which were tested;
- c. Petitioner that the losses in question are specific (Special) and actual or at least potential in nature which, according logical reasoning will certainly take place;

d. a causal relationship (causal verband) between losses and enactment of the Act which petitioned for review;
e. the possibility that the petition is granted constitutional impairment argued will not or no longer occur.

For the things mentioned above, it is questionable according to the Government interests of the Petitioner whether it is appropriate as a party that considers the rights and / or authorities are impaired by the enactment of constitutional provisions Article 113 paragraph (1), paragraph (2), and paragraph (3) of Law Number 36 Year 2009 on Health. Also is there a loss of the Petitioners referred to is specific (special) and actual or at least potential in nature which according to logical reasoning will surely occur, and whether there causality (causal verband) between losses and the enactment of Legislation petitioned for review.

According to the Government, the petition is unclear and the wrong address because provisions petitioned for review is related to the security agent addictive, addictive substance or scope of regulation of production, circulation, and use of addictive substances, in other words a quo provision is not relevant or at least not intended to reduce, disrupt or obstructs the Applicant to utilize the farm in order to planted with tobacco. From the above description, according to the Government request

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Petitioner is unclear and obscure (obscuur libels), especially in construct of constitutional rights and / or authorities losses inflicted on the provisions petitioned for review of the above, Therefore according to the Government, the legal status (legal standing) The applicant does not meet the qualifications as prescribed in Article 51 paragraph (1) Law Number 24 Year 2003 regarding the Constitutional Court and based on the decisions of the Constitutional Court earlier (vide Decision Number 006/PUU-III/2005 and Decision Number 11/PUU-V/2007). However, when His Majesty the Chairman / Constitutional Court judges argued another, Government handed over entirely to His Excellency the Chairman / Member of Assembly Constitutional Court to consider and assess, whether the applicant have legal standing or not.

EXPLANATION OF THE APPLICATION FOR GOVERNMENT TESTING legislation NUMBER 36 YEAR 2007 ON HEALTH

Relative petition for judicial review provisions of Article 113 paragraph (1), paragraph (2) and paragraph (3) of Law Number 36 Year 2009 on Health, which states:

Section 113

(1) Safeguarding the use of materials containing addictive substances directed to do not disturb and endanger the health of individuals, families, society, and environment.

(2) addictive substance as referred to in paragraph (1) include tobacco, a product containing tobacco, solids, liquids, and gases that are addictive

use can cause harm to themselves and / or surrounding communities.

(3) Production, distribution, and use of materials containing addictive substances must meet the standards and / or requirements set.

The foregoing is considered contrary to the provisions of Article 27 paragraph (1) and paragraph (2), Article 28A and Article 28I and Opening (preamble) 1945 Constitution, which states:

Article 27

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(1) All citizens shall be equal before the law and government and shall uphold the law and government no exception.

(2) Every citizen has the right to decent work and livelihoods for humanity.

Article 28A

Every person has the right to live and to defend life and his life.

Article 28I

(1) The right to life, the right not to be tortured, the right to freedom of thought and the right conscience, freedom of religion, freedom from enslavement, recognition as a person before the law, and the right not to be prosecuted on the basis of legal applicable retroactively are human rights that can not be reduced in any event.

(2) Every person entitled to be free from discriminatory treatment of any basis and are entitled to protection against treatment was discriminatory.

(3) cultural identity and rights of traditional communities be respected in the times and civilizations.

(4) The protection, advancement, upholding, and fulfillment of human rights is the responsibility of the state, especially the government.

(5) To uphold and protect human rights in accordance with the principle a democratic constitutional state, then the implementation of human rights guaranteed, regulated, and set forth in legislation.

A. Against substance to be tested by the Applicant filed the above, The government may submit an explanation from the perspective of philosophical and sociological against the existence of provisions petitioned for review, namely as follows:

1. That the setting of health problems as outlined in the Act A quo law essentially aims to increase awareness,

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willingness and ability of healthy life for everyone (including Applicant) to manifest the degree of maximum public health, as an investment for the development of human resources productive socially and economically. The development of health

was organized by basiskan humanity, balance, benefits, protection, respect for the rights and liabilities, equity, gender, nondiskriminatif, and religious norms.

As the implementation of these objectives and principles of the arrangement health in the Act should be thoroughly concerning the problems associated with addictive substances.

2. That the addictive substance is now included in the International Statistical Classification Of Diseases And Related Health Problems (ICD 10) WHO 1992, in the F17 code that reads "mental and behavioral disorders due to use of tobacco ". Therefore it is necessary for the various efforts security so as not to cause addictive substance dependence syndrome or at least prevent the spread of diseases caused by the use of tobacco and tobacco-containing products.

3. Security settings that addictive substances in the Act a quo is an integral part of health settings

Overall, as provided in Article 113 paragraph (1) which expressly says that "securing the use of materials contain addictive substances (including narcotics, psychotropic substances and tobacco) "is essentially directed to not interfere and endanger the health of individuals, families, communities and the environment.

Against a group of narcotics and psychotropic substances has been specifically regulated in a separate law (Law No. 35 of 2009

on Narcotics and Law Number 5 Year 1997 on Psychotropic), given the dangers posed both addictive substances is very high so dangerous abusers and use of the wrong and cause dependence. Marijuana as one of the plants included in the Group I Narcotics
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(See Appendix I List of Narcotics Group I number 8 of Act Number 35 Year 2009 on Narcotics) banned from use for health service. The provision is expressly stated in Article 8 paragraph (1) of Law Number 35 Year 2009 on Narcotics.

The problem of tobacco and tobacco based products containing international agreement (Framework Convention On Tobacco Control-FCTC, WHO 2003)'s settings can be done as integral part of health care settings.

For the things mentioned above, it would require a separate arrangement about the scope of addictive substances as defined in the Act a quo as follows:

Section 113

(1) Safeguarding the use of materials containing addictive substances directed so as not to disturb and endanger the health

Individuals, families, communities and the environment.

(2) addictive substance as referred to in paragraph (1) include tobacco, containing tobacco products, solid, liquid, and gas whose use is addictive can cause loss for themselves and / or surrounding community.

(3) Production, distribution, and use of materials containing substances addictive must meet the standards and / or requirements is set.

The existence of Article 113 paragraph (1) above have been explicitly described objectives to be achieved from setting addictive substances. And setting explicitly the scope of addictive substances have been set forth in paragraph (2).

Furthermore, the standards and requirements that must be met in the production, distribution, and use set forth in paragraph (3) with goal of keeping the addictive substance contained by the material can be suppressed and is intended to suppress and prevent the use of disturb or harm health.

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4. That based on the above, according to the Government existence of Article 113 paragraph (1), paragraph (2), and paragraph (3) of Law a quo is a *conditio sine qua non* for a Strong fundamental to achieving the development objectives of health in general. Thus, according to government regulation Security addictive substances in the a quo law has been in accordance with The main mandate of the constitution in order to increase awareness, willingness, and ability to live a healthy life for everyone in order to materialize public health degree as high as an investment for human resource development which is socially productive and economical which is an integral part of the goal national development as reaffirmed in the Preamble Constitution of the Republic of Indonesia Year 1945.

B. Why needed regulation specifically of addictive substances in Act a quo;

1. Understanding Addictive Substances

a. That according to the provisions of the International Statistical Classification Of Diseases And Related Health Problems (ICD 10 WHO, 1992, page 321), the definition of addiction or dependence is a collection of behavioral, cognitive and physiological phenomenon that occurs after repeated use of a certain materials and is characterized by a strong desire to consume such materials, difficulty in controlling its use, although it can cause harm, to give priority to use of such material from the other activities, increasing tolerance and circumstances sometimes cause withdrawal symptoms (Withdrawal).

b. That addictive substances are drugs and active ingredients which when consumed by living organisms can cause biological work and lead to dependence or addiction is difficult to stop and the effect you want to use an ongoing basis which, if
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stopped to give effect to unusual fatigue or pain outside ordinary.

Sources:

<http://www.scribd.com/doc/17633440/Pengertian-Zat-Adiktif>

c. That addictive substances are substances or chemicals that could overwhelm the nerve cells in the brain in particular the "Reward Circuit" or pathway pleasure with dopamine, the chemical that regulates the nature love, attention, awareness, and other functions.

Sources:

<http://www.anneahira.com/narkoba/zat-adiktif.htm>

d. That addictive substances are materials that cause the behavior the use of which is marked by a sense of addiction, attempts to acquired and the tendency of the high relapse after cessation of use. For example goals. opiates, barbiturates, alcohol, anestetika, volatile solvents, CNS stimulant, nicotine and caffeine.

Sources:

http://dinkes.acehprov.go.id/dinkes/uploadfiles/data2006/kamus_Dinkice/z.pdf

e. Addictive substance that is the term for substances that use can lead to physical dependence and strong long psychological dependence (drug dependence).

That because it contains nicotine, all tobacco and products state tobacco causes addiction.

Behavioral and pharmacological processes that determine addiction to tobacco, similar to the process of determining addiction to narcotics, heroin, and cocaine.

Sources:

USDHHS. The Health Consequences of smoking: nicotine addiction. A Report of the Surgeon General. Rockville MD: USDHHS, Public Health Service, CDC, Center for Health Promotion and Education, Office of
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Smoking and Health, 1988. DHHS publication no. (CDC) 88-8406
Smokeless Tobacco Products

That the tobacco in betel, tobacco with lime and various combination in South Asia and the USA, increasing the risk of of cancer.

Sources:

World Health Organization (2007), The Scientific Basis of Tobacco

Product Regulation, Report of a WHO Study Group, WHO Technical Report Series: 945.

The addition of addictive substances.

That the addition of clove and menthol in cigarettes will reduce the effects of smoke and allow smokers smoked more thereby increasing the toxicity.

Sources:

World Health Organization (2007), The Scientific Basis of Tobacco Product Regulation, Report of a WHO Study Group, WHO Technical Report Series: 945.

2. Category of addictive substances including tobacco

That tobacco as the main component of cigarettes containing nicotine which is a stimulant of the central nervous system (CNS) that interferes neuromuscular balance. Smoked products containing tobacco produce nicotine's effects on the CNS in approximately ten seconds. If you chew tobacco, the effect on the CNS experienced in time of 3-5 minutes.

Effects of nicotine in tobacco that is used by smoked, chewed or inhaled, causing constriction of blood vessels, increased heart rate and blood pressure, decreased appetite, raises emphysema (lung disorders), partially eliminating the feeling of taste and smell and can cause lung pains.

Use of tobacco products in the long run can cause damage to the lungs, heart and blood vessels, and cause cancer.

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Dependence on nicotine develops rapidly, especially psychological dependence. Psychoactive effects of nicotine works with same way in the brain as the types of other addictive substances. When nicotine reaches the brain, smokers experience a feeling of "high", ie a feelings such as tension or decreasing the possibility of Excessive feelings of pleasure (euphoria).

That nicotine has been known and used by Native Americans in religious ceremonies and social events a thousand years ago. Known in Europe in the 17th century, nicotine has been used for the purpose of entertainment and of treatment. Expanded with the introduction of tobacco use type of tobacco that is lighter, cigarette rollers automatic machines, advertising campaign on a large scale and when the government saw this as a source of tax.

Whereas the World Health Organization (World Health Organization-WHO) in his research states that one in five deaths caused by cigarettes and more than 50 percent of smokers die prematurely as a direct result of the disease caused by tobacco products. In addition to the above, the tolerance on

effects of nicotine develops rapidly, faster than heroin and of cocaine.

Further withdrawal symptoms after long-term use can cause headaches, severe irritability, inability to concentrate, restlessness, and sleep disorders. Addiction on nicotine may last a lifetime after stopped taking tobacco.

Nicotine rapidly into the brain so a person smokes. Smoked nicotine levels will be able to cause death if levels over 30 mg.

Pharmacology of nicotine in tobacco products / smoking are complex. According to Jaffe (1990), these factors include: a). composition of tobacco used, b). density levels of tobacco used in cigarettes,

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c). length of cigarettes or cigars, d). characteristics of the filter used, e). paper used and f). temperature of the tobacco is burned.

Tobacco / cigarette containing active substances in 2550 and will increase to more than 4000 (four thousand) if its use were burned.

According to Burn (1991), 1450 kinds of other substances that come from a variety of substances additional (additive), pesticides and organic or metallic substances with intentionally or unintentionally added to the composition of the cigarette.

Nicotine is a major component in tobacco products is highly addictive. 80% of all regular smokers want to quit smoking, most of them have been tried but failed.

Only 2.5% of people who try to quit smoking without help that work. Because of the addictive nature of nicotine is very strong, then only 20% of people who try it for the first time able to stop smoking. (Source: Addiction Smoking

Role and Mechanism of Nicotine-Tena Djuartina and Yovan Hendriek).

Each cigarette contains nicotine an average of 0.1-1.2 mg of nicotine. Of these, levels of nicotine entering the bloodstream stay 25%, but the small amount that could reach the brain within 15 seconds Tar is not a single substance, composed of hundreds of chemicals and dark sticky, and classified as a poison maker of cancer.

(Source: [http://arsanasv.co.cc/nikotin-dalam-tembakau-dan-bahayamerokok-for-health /](http://arsanasv.co.cc/nikotin-dalam-tembakau-dan-bahayamerokok-for-health/))

World Health Organization (WHO) classifies smoking habits as addiction (Tobacco Dependence syndrome: F17 Classification. 2 in the International Classification of Diseases. Tenth Revision). Report 1988 U.S. Surgeon General concluded that cigarettes and all forms of use of tobacco addiction makes the wearer. Pattern tobacco use is fixed, compulsive, and withdrawal syndrome (In this case tobacco) normally accompanies the cessation of use

tobacco. Pharmacologic and behavioral processes that determine addiction on drugs such as heroin and cocaine. Nicotine has an effect on
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brain dopamine system, similar to what is on heroin, amphetamine, and cocaine. In order nature of drug addiction psychoactive, nicotine is more addictive designated as than heroin, cocaine, alcohol, caffeine, and marijuana. Pharmacological more nicotine are arousal, with the effect of activation elektrokortis, cardiovascular and endocrine systems. Nicotine received in the body through smoking, affecting almost all systems neurotransmitters and neuroendocrine. Chronic exposure to nicotine through smoking causes structural changes in the brain with increased number of nicotine receptors. As a result of acute nicotine use causes increased heart rate, blood pressure, and flow of heart and blood vessel constriction. Other influences that can caused primarily by the components of smog, can also reduce levels of oxygen in the blood due to rising levels of carbon monoxide, as well can increase the amount of fatty acids, glucose, cortisol, and hormones other in the blood and increased risk of hardening of arteries arterial blood and blood coagulation (which evolved into the attack heart disease, stroke) and carcinogenesis.

The most serious result of chronic use of nicotine is dependence, because once a smoker would be difficult an end to the habit either physically or psychologically. In addition to being physiologically addicted, smoking can also meet the desires perceived psychological. This process along with the ceremony lit a cigarette and exhaling smoke made repeatedly, smoking makes a very compulsive behavior.

Smoking is known as a difficult habit to stop and just very few smokers who successfully stop their habit several times before attempting a serious effort. For example in Dominican Republic, the results showed that most smokers (87%) want to quit, while 67.5% claimed to have attempted to do so earnestly at least one time. Likelihood of success in the effort without the help of declared

determine the clinical effects in stopping smoking

is that the effort was to be cyclic (recurring), so that the smokers who quit at risk back in its original habit.

3. Levels dangers of addictive substances

That nicotine has a degree of dependence (dependence) the most powerful compared with heroin, cocaine, alcohol, caffeine and marijuana.

While the level of tolerance to nicotine is a-2 after the heroin.

That the addictive quality parameters of a substance can be described as the following:

Withdrawal: The severity of symptoms caused by the stop using the substance.

Reinforcement: The tendency of substances to encourage users to wear again and again.

Tolerance: The need for users to have a dose increasing to get the effect the same.

Dependence: Difficulty to stop.

Intoxication: The level of intoxication produced by substances that is used.

Sources:

([Http://www.druglibrary.org/SCHAFFER/library/basicfax5.htm](http://www.druglibrary.org/SCHAFFER/library/basicfax5.htm))

The following can be described 2 (two) of the United States drug experts that assess a variety of drugs based on individual factors considered by the WHO at the time of determining the nature of addictive.

Both experts on conducting research to assess the 6 types

The most common recreational drug based on risk factors, ranging with number 1 for the most at risk and number 6 for the most less risky, such as below:

Rating by Dr. Jack Henningfield, National Institute on Drug Abuse (NIDA)

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Substance Withdrawal Reinforcement Tolerance Dependence Intoxication

Nicotine 3 4 2 1 5

Heroin 2 2 1 2 2

Cocaine 4 1 4 3 3

Alcohol 1 3 3 4 1

Caffeine 5 6 5 5 6

Marijuana 6 5 6 6 4

Note: 1 = most severe

6 = the lightest

Based on these ratings, higher levels of nicotine dependence of heroin, while alcohol is considered the most dangerous in terms of withdrawal due to sudden discontinuation can produce effects alcoholics life-threatening. Alcohol is considered the most intoxicating

among all drugs in a table while nicotine dependence rated worse than heroin.

Rating by Dr. Neal L. Benowitz, University of California, San Francisco:

Substance Withdrawal Reinforcement Tolerance Dependence Intoxication

Nicotine 3 4 4 1 6

Heroin 2 2 2 2 2

Cocaine 3 1 1 3 3

Alcohol 1 3 4 4 1

Caffeine 5 5 3 5 5

Marijuana 6 6 6 6 4

Note: 1 = most severe

6 = the lightest

Rating according to Dr. Benowitz is slightly different, but its ranking is essentially the same, have high levels of nicotine dependence (dependence) The most high.

<http://www.a1b2c3.com/drugs/gen007.htm>

In the average healthy adult, lethal dose of nicotine

estimated single dose of nicotine is 60 mg (Ashton, 1992). On

cigarettes generally contain 6-11 mg of nicotine (Henningfield, 1995),

but nicotine can be absorbed by the body on each stem about 3%

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up to 40% (Benowitz & Henningfield, 1994). Because nicotine can not be

moved easily from the alveoli in the lungs to the blood vessels, a

smokers typically absorb about 1-3 mg of nicotine from each stem

(Henningfield, 1994). So active smokers receive about 1 / 60 to 1 / 24

lethal dose of nicotine over, every time they smoke a cigarette.

In one huh smokers who smoke a pack as much as the average

a cumulative dose of nicotine absorbed approximately 20-40 mg.

Once up into the body, nicotine is rapidly distributed to every

tissues in the body rich in blood, including the brain (Henningfield &

Nemeth-Coslett, 1988). Nicotine is a substance that dissolves in water and soluble

in the fat so it can enter the brain quickly. The brain was

become the most widely organs contain nicotine

accumulates due to chronic use. Nicotine contained in

brain can be two times greater than those in other body parts

(Fiore, et al, 1992). In the brain, nicotine is also known to have a device

as it existed on the substance cocaine and amphetamines (Rustin, 1988).

4. Hazardous substances other than nicotine contained in the product

tobacco / cigarette is burned.

Cigarette smoke consists of a wide range of complex mixtures of chemicals

which is a non-specific product from the burning material

organic (such as aetaldehyd and formaldehyde), and chemicals

specifics of burning tobacco and other components of cigarettes (eg

tobacco-specific nitrosamines). Here are brief details of some

component of tobacco / cigarette is burned:

a. Carcinogens

International Agency for Research on Cancer (IARC) has made 36 list of chemicals "known to cause cancer" (Group 1) in humans (IARC, 1999). Cigarette smoke contains at least 10 kinds of the 36 chemicals, and many chemicals Other mutagenic category "Probably carcinogenic" or "Possibly carcinogenic" (IARC Group 2).

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b. Tar

Tar is a part of tobacco smoke in the form of mass dry particulates and nitrogen-free (U.S. Surgeon General, 1988). Particulate fraction of cigarette smoke contains many constituents dangerous carcinogenic, including metals, PAHs, dioxins, and some nonvolatile nitrosamines. The content of tar in cigarettes traditionally measured by standardized methods with the help smoking machine. Tar is used for level measurement relative toxicity of tobacco products, so there is a classification of cigarettes with high levels of tar, medium, and low.

c. Gas

In addition to fase particulate matter (tar), found in tobacco smoke many chemicals in the gas phase. The gas most widely reported are carbon monoxide (CO) with levels of up to hundreds of ppm. Carbon monoxide toxicity is due their ability to form karboksihemoglobin, a complex chemically stable with hemoglobin. This complex effectively eliminate the oxygen-carrying molecule, hemoglobin, from circulation of blood and vital organs. Concentration karboksihemoglobin blood of about 2% or more of hemoglobin levels associated with angina pain in people with cardiovascular disease and can cause cardiac ischemia and reduced blood flow to the the heart.

d. Nitrosamine

Nitrosamines are organic amines which contain a nitro group (-NO) are attached to amine groups by reaction nitrosated. Most of the compounds studied proved amen cause DNA mutations.

Non-specific nitrosamines in tobacco among Nnitrosodimetilamin (NDMA), N-nitrosodietilamin (NDEA), Nnitrosoetilmetilamin, -Nitrosodietanolamin N, N-nitrosopirolidin (NP), and N-nitroso-n-butylamin (NBA) (Mitacek et al., 1999).

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The compounds are generally called tobacco-specific non-volatile Tobacco-Specific nitrosamines (TSNA). There are four

range of TSNA which is widely reported in the literature, namely: Nnitrosoanabasin (NAB), N-nitrosoanabatin (NAT), 4-methyl-(Metilnitrosoamino) -1 - (3-pyridyl)-1-butanon (NNK) and nitrosonomikotin (NNN). NNK and NNN have the greatest mutagenic potential. NNK and NNN shown to cause tumor-related DNA adducts in rodents and classified as probable human carcinogens by IARC (Hecht, 1999; IARC 1999). Regulatory agencies like USFDA and USEPA consider nitrosamines of any kind has the potential mutagens and cancer hazards only be seen through their chemical structure. The study concluded that the reduced use of fertilizers rich in nitrates and heavy metals will significantly reduce carcinogenicity of cigarette smoke by way of reduced levels of nitrosamine, cadmium, nikel, chromium, beryllium, arsenic, 2-naftilamin, and 4 - aminobifenil.

e. Polynuclear Aromatic Hydrocarbon (PAH)

Polinuclear Aromatic Hydrocarbon Compounds (PAHs) are formed through combustion of any organic compounds. Benzo (a) piren (BAP) is the substance most widely studied and is one toxicology of the substances which are most powerful in the group of compounds this. Analysis of the Canadian cigarette BAP levels showed that average level was 17 ng / cigarette, but to brand the and extra ultra low tar has an average value of half the value with measurements under standard conditions of smoking (Kaiserman and Rickert, 1992).

f. Chlorinated dioxin and furan

Chlorinated dioxins and furans are contaminants formed through the reaction between compound / organic chlorine, usually in combustion conditions. The report shows the contaminant levels of dioxin on cigarettes in New Zealand compared with standard low the world. The content of dioxins in cigarette smoke because

59 presence in the cigarette itself or the result of reaction between chlorine with organic compounds during the combustion process. Report on Sweden showed dioxin levels of 1490 pg / smoke flow cigarettes (Lofroth and Zebuhr, 1992).

Source:

The Chemical Constituents in Cigarettes and Cigarette Smoke:

Priorities for Harm Reduction, A Report to the New Zealand Ministry of Health, March 2000

[http://www.moh.govt.nz/moh.nsf/pagescm/1003/\\$File/chemicalconstituentscigarettespriorities.pdf](http://www.moh.govt.nz/moh.nsf/pagescm/1003/$File/chemicalconstituentscigarettespriorities.pdf)

5. Setting the addictive substance in many countries

In America, tobacco as an addictive substances regulated in the Family Smoking Prevention and Tobacco Control Act, landmark legislation which provides

authority on the USFDA to regulate the manufacturing and marketing tobacco in order to protect public health.

<http://www.americanheart.org/presenter.jhtml?identifier=11223>

In Europe there is a Tobacco legislation, regulation and voluntary agreements (England and the European Union) Action on Smoking on Health

<http://old.ash.org.uk/html/policy/legislation.html>

Caffeine has addictive properties, in the United States is regulated through the mechanism Dual Regulation of Caffeine as Caffeine as a Food and Drug Administration.

<http://leda.law.harvard.edu/leda/data/642/Mrazik.html>

In addition to the above description, the Government can explain things as follows:

a. Security Settings on addictive substances in Law

Invite a quo has been the establishment of procedures to meet regulatory legislation is good and right in accordance with legislation and regulations.

b. Security arrangements addictive substances in the Act a quo

not done in a hurry, hurry, hurry, or forced, precisely arrangements concerning the safeguarding of addictive substances in Undang60 Invite a quo has been considering various aspects of the main aspects of public health in general.

c. Security arrangements addictive substances in the Act a quo

are in accordance (synchronous) with other relevant Act.

Setting addictive substances in the Act a quo is not overlap with the legislation the other,

for example relating to Narcotics stipulated in the Act

No. 35 of 2009 on Narcotic Drugs and Psychotropic Substances have been set specifically in Law Number 5 Year 1997 on

Psychotropic substances, so that the security settings of addictive substances in Act a quo are complementary.

That the Government does not agree with the reasons for Petitioner's states that grow tobacco and smoking especially clove is a culture and work culture, with an explanation as the following:

1. Understanding Culture and Cultural

a) Cultural literally comes from the Latin that is Colere that have meaning till the land, cultivate, nurture fields (Soerjanto Poespowardojo, 1993).

b) According to The American Herritage Dictionary defines culture as a whole is of a pattern of behavior transmitted through social, religious art, institutional, and all results of human work and thought of a group of men.

c) According to Koentjaraningrat culture is the whole system

ideas and products of human action in order
lives of people who have self-made man with
how to learn.

2. Definition of Work Culture

Work culture is a philosophy with the underlying philosophy of life
as the values of the properties, and also the driving habits
yang cultivated in a group and reflected in the attitude

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a behavior, ideals, opinions, views and actions
manifested as work. (Source: Drs. Gering Supriyadi, MM, and Drs.
Tri Guno, LLM)

3. Or the purpose Benefits Work Culture

Work culture has a goal to change attitudes and behaviors
Existing human resources in order to increase labor productivity for
face many challenges in the future.

4. The benefits of implementing a good work culture:

- a. Improving the lives of mutual aid
- b. Improve togetherness
- c. Mutually open to each other
- d. Improving family life
- e. Increase the sense of kinship
- f. Establish better communication
- g. Increasing labor productivity
- h. Responsive to the development of the external world, etc..

Culture is the Definition of Culture by Big Indonesian Dictionary
1 Mind; reason: the results -, 2 custom: explore the language and -; 3
Something about the culture that has developed (civilized, advanced):
soul -; 4 Cak something that has become a habit that has been
difficult to change.

Definition of Culture according to Wikipedia

Culture is a way of life that developed and shared
by a group of people and passed down from generation to generation.
Culture is a holistic lifestyle. Culture is complex,
abstract, and spacious. Many cultural aspects contribute to determine the behavior
communicative. Elements of socio-cultural spread and include many
human social activities.

Thus culture must have a positive value for the behavior
society that must be conserved, whereas the smoking behavior (clove)
from the standpoint of health does not have a positive value even
intrusive and detrimental to health.

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Based on the above explanation, according to the provisions of Government
petitioned to be tested by the applicant, it aims to
provide general protection (general protection) against each

person will harm the use of addictive substances, and therefore according to Government of the a quo provision is not contrary to the provisions of Article 27, Article 28A, Article 28I of the 1945 Constitution.

CONCLUSION

Based on the above explanation, the Government appealed to the Honor Chair / Panel of Judges of the Constitutional Court to examine, decide and adjudicate a petition to Law Number 36 Year 2009 on Health of the Constitution of the Republic of Indonesia Year 1945, can provide a decision as follows:

1. Stating that the applicant has no legal status (legal standing);
2. Reject the petition in whole or applicant for setidaknya petition stating the Petitioner can not be accepted (Niet ontvankelijk verklaard);
3. Receive Statement of the Government as a whole;
4. To declare that the provisions of Article 113 paragraph (1), paragraph (2) and paragraph (3) Law Number 36 Year 2009 on Health does not conflict with provisions of Article 27 paragraph (1) and paragraph (2), Article 28A and Article 28I and Opening (preamble) of the Constitution of the Republic of Indonesia In 1945.

However, if Your Honor Chair / Panel of Judges of the Constitutional Court other opinion, please wise decision and fairly as possible (ex aequo et bono).

In addition to the information filed, the Government also filed 3 (three) Witness and 6 (six) persons expert, who has heard testimony on the trial Thursday, June 2, 2010 and Wednesday, January 5, 2011 which essentially explained as follows:

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Government Witness

1. Rima Melati

Witness a smoker and as a result of cigarette addiction, witness ill end-stage cancer.

2. Yanti Sampurna

Her husband died witness had smoked 40 years and can not be stopped smoked until his death. Witness's husband suffered from lung cancer with discovery of typical cells as cancer cells due to tobacco;

3. Pa Iswanto

Witnesses are tobacco farmers since 1970 and has enjoyed the results

Tobacco is by setting up home and have a bike motors;

kwatir witness as tobacco farmers if tobacco is removed which will result will try his fortune to the big city.

Government experts

1. Prof. Dr. Amir Syarief

Nicotine is the addictive substance classified because when nicotine is consumed, it can be cause psychological dependence, physical, and tolerance, as well as difficult stop even though these substances can cause problems for himself;

psychological dependence when a person consumes a substance and willing to use it repeatedly to

obtain the effect of causing a feeling of comfort, pleasure, passionate, excited that when the appetite is not implemented will induce a feeling otherwise become lethargic, listless;

physical dependence when a person has consumed a substance in certain period and a sudden stop or reduce it, it will lead to signs of physical impairment;

Dependence tolerance when someone has consumed a substance within a certain period and require an increase in dose, or dose to obtain the same effect as before;

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drug withdrawal symptoms are symptoms caused by someone who has undergone a dependency, which stops will reduce the its use abruptly. Presence of nicotine withdrawal symptoms offense, a person who is not impatient, have properties hostile, feel anxious, uncomfortable, unpleasant, difficult concentrating, restlessness, decreased heart rate, appetite increase, weight increase;

After tobacco smoke contained nicotine in the blood. Smoke tobacco can cause health problems that cause cancer of the lung, oral cavity, pharynx, larynx and isofagus that can cause problems in blood vessels of the heart and brain. Woman pregnancy occurs arbortus, congenital abnormalities in the fetus;

Nicotine is the addictive substance classified . Nicotine contained in tobacco, in levels are quite large. Cigarettes contain nicotine that tobacco tobacco smoke can cause psychological dependence of physical and tolerance. Tobacco smoke contains chemicals that can trigger the occurrence of cancer, lung diseases and disorders
Other health.

2. Dr. Widyastuti Soerojo

Whereas Law Number 36 Year 2009 on Health provide protection for all citizens without exception according to the mandate of the 1945 Constitution;

Protection against tobacco products as addictive substances are not prohibit tobacco farming especially deadly eye livelihoods of farmers and not against the 1945 Constitution;

addictive nature of nicotine is very strong on, studies showed that smoking cessation is more difficult than stopping heroin addiction

and cocaine. The existence of 60 million active smokers in Indonesia today have indicated that guarantees the continuity of tobacco farming next few decades;

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3. Ahmad Hudoyo

- Tobacco can be used as preservatives of preservatives for flavor, for wood and can be colored silk;
- Leaf Tobacco of the research results can be as a diabetes drug and can be genetically engineered anti-cancer drugs;
- Tobacco leaves can become an idol for the doctors and geneticists biologists of the most popular is the leaf easily engineered, fast DNA changed in character so it is very efficient for these studies.

4. Arini Setiawati

- Nicotine in cigarettes is not so dangerous is much safer than smoking, nicotine poisoning in small quantities is much more secure than smoking. Substances in tobacco smoke that is hazardous, toxic and cause cancer;
- Passive smokers inhale harmful smoke but not get the pleasure experienced by active smokers, so that it would be unfair if a person's father smoked while his wife and children have to inhale cigarette smoke, since can pose a danger to women and children;
- active Smokers should quit smoking so as not to have disease light smokers and dangerous because of his death was just the same with heavy smokers because smoking to 4 cigarettes a day with more than 20 cigarettes a day the same illness and death provoke.

5. Abdillah Ahsan

□ That expert has conducted studies in Kendal, Bojonegoro and Lombok East and experts have been interviewed as many as 450 respondents Hodge people and farmers have interviewed 66 managers which principally as follows:

- They complain that the risk, the tobacco plantation business very risky, because the weather changes in planted tobacco are annual crops, planted in the dry season or the season

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rainy. If planted in the dry season, when harvest rains damaged the quality;

- Changes in prices, the price determined by middlemen, graders;
- Pests of plants;
- The fall in the purchase, because the main buyers of tobacco leaves is cigarette industry. If the tobacco industry does not want to buy it tobacco is not known to what use.

6. Fattah Ahmad Wibisono

- That said smoking or cigarettes are not listed in the Qur'an and Assunah tadkhin said nothing in the scriptures;
- Makruh and illicit, the point is alike temunya want the activity stopped smoking;
- If people still want to smoke means the person does not maintain health, did not keep his soul as the ultimate goal Shari'a, the main goal of Islam;

[2.4] Considering whereas to respond to the arguments of the petition, House of Representatives have filed a written statement received Court Registrar's Office on Friday, July 23, 2010 which essentially explained as follows:

A. ARTICLE PROVISION OF LAW NUMBER 36 OF 2009

ABOUT THE HEALTH petitioned for review
BASIC LAW OF THE REPUBLIC OF INDONESIA
1945

Petitioner in his petition filed test of Article 113 paragraph (1), paragraph (2), and paragraph (3) of Law Number 36 Year 2009 on Health to the 1945 Constitution.

The sound of Article 113 of Act a quo is as follows:

(5) Securing the use of addictive substances containing materials directed so as not to disturb and endanger the health of individuals, families, communities and the environment.

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(6) addictive substances referred to in paragraph (1) include tobacco, containing tobacco products, solid, liquid, and gas addictive nature of its use can cause harm to himself and / or surrounding community.

(7) Production, distribution and use of materials containing substances addictive must meet the standards and / or requirements set.

Applicant assumes the provisions of the articles are in contrast to Opening (Preamble), Article 27, Article 28A and Article 28I of the Year 1945.

B. RIGHTS AND / OR THE CONSTITUTIONAL AUTHORITY CONSIDERED
ENTRY INTO THE APPLICANT impaired by PARAGRAPH OF ARTICLE 113 (1), PARAGRAPH (2), AND PARAGRAPH (3) OF LAW NUMBER 36 OF 2009 CONCERNING
HEALTH

Petitioner in the petition a quo argued that the right have been impaired by the constitutional validity of Article 113 paragraph (1), paragraph (2), and paragraph (3) of Law Number 36 Year 2009 on Health, which is the following main points:

1. Petitioner argues that Section 113 of Act a quo contrary to the principle of justice, because it only lists one agricultural crops are tobacco plants that are considered

cause harm to themselves and / or surrounding community, whereas the cannabis plant, which is prohibited are not included in Act a quo as well as many types of agricultural crops iainnya is also not good for the health impact and Section 113 Act a quo also be used as a legal umbrella or foundation laws for the Government to give birth RPP on Security Tobacco products as addictive substances without seeing the impact of losses experienced by tobacco and clove farmers Indonesia (vide Petition a quo page 13 paragraphs of the 2nd and 3rd paragraphs and page 16 paragraph 1);

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2. Petitioner argues that the enactment of Section 113 Law Law Number 36 Year 2009 on Health, it will psychological impact and will result in material loss and absence of legal certainty in the continuing life of the Indonesia tobacco and clove farmers, reduced labor agriculture, labor / cigarette factory workers, and other interested parties iainnya (see application page 19 paragraph 2);

3. That the Petitioner in the petition a quo also postulates, Article 113 paragraphs a quo did not favor the interests of tobacco farmers right to work and to live for humanity, the right to live and sustain life in this life tobacco farmers, cloves, and Indonesia as well as factory workers other parties associated with pertembakauan also have the right the same life that grow tobacco or cloves is an obligation for farmers to continue to thrive. In addition to plant crops of tobacco and cloves in Indonesia is not only to life but has a plant culture because it is hereditary from generation to generation in which cultural identity and the existence of traditional society is also protected by the 1945 Constitution (vide petition pages 22-23); That based on the arguments mentioned above, the Petitioner in the petition a quo argue Article 113 paragraph (1), paragraph (2), and paragraph (3), contradictory and not in line with the Preamble (Preambule) and the articles UUDn 1945, as follows:

Article 27 UUD 1945 states:

(1) All citizens shall be equal before the law and government and shall uphold the law and government with no exception.

(2) Every citizen has the right to work and to worthy of humanity.

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Article 28A of the 1945 Constitution states:

Every person has the right to live and to defend life and

his life.

Article 28 of the 1945 Constitution states:

(1) The right to life, the right not to be tortured, the right to freedom of thought and conscience, freedom of religion, the right not to be enslaved, to be recognized as a person before the law, and the right not to be prosecuted under basic laws that apply retroactively are human rights that can not be reduced under any circumstances.

(2) Every person entitled to be free from discriminatory treatment of any basis and are entitled to protection against treatment was discriminatory.

(3) cultural identity and rights of traditional communities be respected in with the development and civilization.

(4) The protection, promotion, enforcement and fulfillment of human rights is primarily the responsibility of state government.

(5) To uphold and protect human rights in accordance with principles of a democratic constitutional state, the exercise of rights humans are guaranteed, regulated and set forth in legislation regulations.

C. DESCRIPTION House RI

That the postulates of the applicant as described in petition a quo, on this occasion the House in the delivery first outlines his views on the legal position

(Legal standing) can be explained as follows:

1. The Status Law (Legal Standing) Petitioner.

In accordance with the provisions of Article 51 paragraph (1) of Law Number 24 Year 2003 concerning Constitutional Court (hereinafter called the Act

The Constitutional Court), stating that the applicant is a party assume rights / or impaired by its constitutional authority enactment of the Act, namely:

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- a. individual Indonesian citizen;
- b. customary law community unit along still alive and in accordance with the development of society and the principle of the Unitary Republic of Indonesia as regulated in the Act;
- c. Legal entities of public or private; or
- d. State institutions;

The provision is reinforced in the explanation, that the meaning of constitutional rights are the rights set out in Act of 1945;

Elucidation of Article 51 Paragraph (1) states, that the only rights that explicitly provided for in the Act of 1945 are including "constitutional rights";

Therefore, according to the Law on the Constitutional Court, for a person or a party may be accepted as a party applicant who has legal status (legal standing) in the Application Testing

Act against the Constitution of 1945, the first
first have to explain and prove:

a. the rights and / or authorities as
referred to "Article 51 paragraph (1) and Explanation of the Constitutional Court Act"
which he considers have been impaired by the enactment of a Law

Law petitioned for review;

b. constitutional rights and / or constitutional authority as
result of the enactment of Law petitioned for review;

That the boundaries of constitutional impairment,

The Constitutional Court has given meaning and limits of

constitutional damages arising from the enactment of a Law

Act pursuant to Article 51 paragraph (1) of the Constitutional Court, must

meet 5 (five) requirements as has been limited by Decision

The Constitutional Court earlier (vide Decision on Case No. 006/PUU-III /

Decision on Case No. 2005 and 011/PUU-V/2007), namely as

the following:

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a. the rights and / or constitutional authority of the
granted by the 1945 Constitution;

b. that the rights and / or Petitioner's constitutional authority
considered by the Petitioner have been impaired by an Act
petitioned for review;

c. that the constitutional rights and / or constitutional authority
in question is specific (special) and actual or at least
potential is based on logical reasoning can be ensured
will occur;

d. existence of causal relationships (casual verband) between the constitutional rights
and / or authorities argued by the Applicant with
enactment of Law petitioned for review;

e. the possibility that the petition is granted
the constitutional rights and / or authorities
argued will not or no longer occur;

If these five conditions are not met by the applicant in
proposed testing of the Act against the 1945 Constitution, the
Petitioner has no legal standing qualifications (legal standing)
as the Party Applicant;

Based on the provisions of Article 51 paragraph (1) and Explanation of Law

Requirements according to the Constitutional Court and Court Decisions

Constitutional Case Number Case Number 006/PUU-III/2005 and Decision

RI 011/PUU-V/2007 Parliament argued that there is no loss

Petitioner or losses that are potentially going to happen

with the enactment of Article 113 paragraph (1), paragraph (2), and paragraph (3) Law

Law Number 36 Year 2009 on Health with an explanation

as follows:

1. that the Petitioner argued in his petition a quo serves as an Indonesian citizen and bertmdak for on his own behalf as well as representing tobacco growers some of the village chief and village residents Waterford District who have similar interests;

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2. that in the a quo petition, the Petitioner did not reveal clearly and concretely about the loss of constitutional rights be specific and actually experienced directly by the Applicant as a result of enactment of the provisions of Article 113 paragraph (1), paragraph (2), and paragraph (3) the Act a quo, but only in the form of assumptions and Applicants who thinks worries potentially eliminate constitutional right to life by planting tobacco;

3. that the House does not agree with Petitioners' argument that, because when looking at the provisions of Article 113 paragraph (1), paragraph (2), and paragraph (3) the Act a quo, giving the sense that the material norms of Article 113 paragraph (1), paragraph (2), and paragraph (3) of Law Number 36 Year 2009 on Health was not is a norm that prohibits to grow tobacco, but a norm which implies that the substance addictive is the chemicals that can harm health society, so the use of addictive substances must be carried out carefully in accordance with the standards set, so as not to cause harm to themselves and / or surrounding community, and do not disturb and endanger the health of individuals, families, communities and environments that are part of purpose of the Act a quo as listed in Article 3 of the Act a quo, which reads: "Development Health aims to increase awareness, willingness, and ability of healthy life for everyone to manifest degrees public health as high, as an investment for development of human resources and socially productive economically viable. ";

4. That even if tobacco according to the provisions of Article 113 paragraph (2) Act a quo contain addictive substances, does not mean the provision Article 113 paragraph (2) of the Act a quo has prevented or reduce the Petitioner's constitutional rights to grow tobacco In other words that the provisions of Article 113 paragraph (2) of the Act

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a quo did not impede or prejudice the right Petitioner to grow and develop tobacco so that no potential to cause harm konstilusal for Petitioner therefore in reality

Applicant and the public can still pelani tobacco conduct its activities as a tobacco farmer with no obstructed or reduced with the enactment of the provisions of Article 113 paragraph (1), paragraph (2), and paragraph (3) the Act a quo;

5. That the Applicant will thus concern the loss of identity culture in traditional societies grow tobacco farmers tobacco to be unwarranted and unfounded, given the provisions Article 113 paragraph (1), paragraph (2), and paragraph (3) the Act a quo the same does not prohibit and impede or prejudice the right constitutional for the Petitioner and the community for Tobacco Farmers grow tobacco;

6. That the Applicant will concern the issuance of Government Regulation on Protection of Tobacco Products as addictive drug thinks it may cause harm to the Petitioner and farmers tobacco is very premature because until now there has been published Government Regulation of the a quo, but is still in draft form Government Regulation. Therefore, the Parliament argued that the Petitioner argued the issue of testing provisions Article 113 paragraph (1), paragraph (2), and paragraph (3) the Act a quo, not a question of constitutionality, but the implementation issues norms of the provisions of Article 113 paragraph (1), paragraph (2), and paragraph (3) Law Invite a quo relied upon to issue Regulations Government a quo. Even if a quo Government Regulation was detrimental to the interests of the Petitioner, the authorized to test the government regulation is not the Court Constitution but the Supreme Court the authority to examine the legislation under the Act.

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Based on these descriptions, the House argued that the Petitioner has no legal status (legal standing), as specified in Article 51 paragraph (1) and Explanation of the Law Court The Constitution, as well as the loss of constitutional limitations that must be met accordance with the rulings of the Constitutional Court earlier. By therefore ask that the Speaker of the Parliament / Assembly Constitutional Court Judge noble wisely states the Petitioner has no legal status (legal standing), so that the petition can not be accepted (niet ontvankelijk verklaard); But if the Chairman / Council of Judges of the Constitutional Court noble Another opinion, submitted the following Information about the House of Representatives material testing of Law Number 36 Year 2009 on Health;

2. Material testing of Act No. 36 of 2009 on Health

Against the arguments put forward applicant as described

above, the House gave the following caption:

1. That the basic philosophy and constitutional and manufacture of the Health Act is that health is a human right and wrong welfare of the elements that must be realized in accordance with ataata Indonesian nation as stated in the Preamble 1945 Constitution, therefore, every activity and every effort to improving community health status is the highest needs to be done as closely as possible to the establishment of resource Indonesia's human quality, thereby improve the competitiveness of the nation;
2. That one of the efforts to achieve the above, established the Act 36 of 2009 on Health aims as set out in Article 3 of Law a quo that "Health development aims to improve awareness, willingness, and ability to live a healthy life for everyone degree of public health to manifest the highest possible, 75 as an investment for the development of human resources socially and economically productive ";
3. That one attempts to achieve the objective as listed in Article 3 of the Act a quo, then in provisions of Article 113 paragraph (1), paragraph (2), and paragraph (3) the Act a regulated distinctly quo arrangements concerning the safeguarding of use of addictive substances including tobacco, products that containing tobacco, solids, liquids and gases that are addictive the use of which may cause harm to himself and / or surrounding community. Therefore, setting on tobacco plants in Health Act intended to protect the rights of others, including children and public health, especially the people that will be affected negative impact of tobacco use in the form of cigarettes. Law Health Act aims to provide real protection of children from the abuse of addictive substances such as cigarettes in line with Law No. 23 of 2002 on Child Protection which requires the Government to provide protection to the health of children;
4. That the addictive substance contained in tobacco or productproducts has properties that contain tobacco addiction very high if compared to the nature of addiction is in bahanbahan lainnya, which will bring the result of addiction is very difficult to remove by the wearer. It certainly will bring a very harmful effects to health and din surrounding environment, while the addictive substance itself contains the meaning of active ingredients which when consumed continuously

will lead to dependence or addiction is very difficult to be released which if discontinued use of the will suddenly give a very big impact for the body man;

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5. That tobacco plants included as one of the addictive substance in Health Act can not be viewed as forms of injustice and prejudice hinder alau Petitioner, because addictive substances lainnya as contained in marijuana plants categorized as narcotics has been specially arranged in Act No. 35 of 2009 on Narcotics. Similarly addictive psychotropic substances have been regulated separately in Law Number 5 Year 1997 on Psychotropic. Therefore, the provisions of Article 113 paragraph (1), paragraph (2), and paragraph (3) the Act a quo is not against the principle of justice, given the Health Act only seeks to give emphasis in the field of public health primarily provide protection against the use of tobacco containing higher levels of addiction than with plants lainnya;

6. Tobacco plants that contain addictive substances that need to be regulated its use as referred to in Article 113 paragraph (2) Act a quo is already through the study of sufficient long and there are recognized throughout the international reference world in order of production, circulation, and its use must meet the standards and / or requirements set. Tobacco control through compliance and / or terms use has been sufficiently recognized, it is evident from the data in 2008 already 160 countries that have ratified the Framework Convention on Tobacco Control (FCTC);

7. That need to be considered in the explanation of Article 113 paragraph (3) Law Invite a quo mentioned setting standards and requirements use of addictive substances is directed to addictive substances contained by the material can be suppressed to prevent circulation and prevent the use of fake materials that interfere with or detrimental to health. Therefore it should be seen that impact and use of addictive substances was achieved not cause

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greater losses to the public health, children and the surrounding environment;

8. Parliament believes that the provisions of Article 113 paragraph (1), paragraph (2), and paragraph (3) the Act a quo, in line with the 1945 Constitution and there is no contradiction with the principle of fairness, certainty, and usefulness, considering there is still an element of justice is given

for the benefit of more persons mainly of protection public health, children and the nation, as well as the principle of legal certainty because the Act regulates the role of government as a regulator to regulate the use of safety hazards addictive substance for health, and benefits for health community;

9. That the Health Act also does not conflict with Article 28A of the 1945 Constitution relating to the rights of life, because the Act This Act does not prohibit at all for tobacco farmers to grow tobacco as a livelihood for survival his life, the Parliament argued that in essence the Act It regulates the protection of public health and nation in general from the negative effects of tobacco use.

Thus it was very clear and bright that the provisions Article 113 paragraph (1) paragraph (2), and paragraph (3) of Law Number 36 Year 2009 on Health, in no way intended to prohibit tobacco farmer to grow tobacco, but intended to regulate the use of addictive substances that interfere or detrimental to the health of children, society and environment around it. In addition it is also intended to protect the front of the younger generation of the negative impact of tobacco;

10. That based on these descriptions, the House holds provisions of Article 113 of Law Number 36 Year 2009 on Health has been in line with the objectives of the Indonesian people to improving community health status which is part of human rights and is one element

78 welfare to be realized in accordance with the ideals of the nation Indonesia as stated in the Preamble of the Act Constitution of the Republic of Indonesia Year 1945. Therefore provisions of Article 113 paragraph (1), paragraph (2), and paragraph (3) of Law Number 36 Year 2009 on Health did not contrary to the Preamble (Preambule), Article 27, Article 28A and Article 28 of the Constitution of the Republic of Indonesia 1945;

That based on the arguments mentioned above, the House would invoke Chair / Panel of Judges of the Constitutional Court gave honorable amar delegates as follows:

1. Stating a quo Petitioners have no legal status (legal standing), so the petition a quo should be declared unacceptable (Niet ontvankelijk verklaard);
2. Stating the petition a quo denied in whole or setidaknya partially unacceptable;
3. Description House of Representatives declared acceptable to all;

4. To declare that Article 113 paragraph (1), paragraph (2), and paragraph (3) of Law No. 36 Year 2009 on Health is not contrary to the Preamble (Preamble), Article 27, Article 28A and Article 28I of the Constitution Republic of Indonesia Year 1945;

5. To declare that Article 113 paragraph (1), paragraph (2), and paragraph (3) of Law No. 36 Year 2009 on Health still have binding legal force;

[2.5] Considering whereas the Court has also heard and read Related Party information which principally explains as follows:

[2.5.1] Whereas dr. drh. Mangku Sitepoe volunteered as a Related Party and has provided oral testimony at the hearing on Thursday, May 20 2010 and provided a written statement received by the Court on Friday, October 22, 2010, which principally explains as the following:

- That which is harmful to health is not a tobacco cigarette smoke;
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- Preparation of the Act does not distinguish between tobacco with cigarette smoke;
 - Cigarette smoke consists of white and kretek cigarettes which white as standards for the health hazards of tobacco containing 100% whereas cigarettes contain 60% tobacco and 40% clove;
 - Smokers are 2 kinds of mainstream smoke and side stream were excluded. Side stream smoke and mainstream smoke are smokers active;
 - To smoke cigarette smoking machine and checks used to examine the levels of nicotine in tobacco use chemical examination usual;
 - That smoking is not this is not the cause of death and not the cause death but stimulates certain diseases that can cause death;
 - Not all dangerous addictive substances eg theobromine in chocolate is not dangerous;
 - According to the dictionary of medicine in Indonesia addictive substance is a substance or menyebabkan substances that cause physiological needs dependence. But the addictive substance according to one book that the Related Party reading is a drug or substance when consumed by living things cause the biological activity, encourage dependency and addiction, difficult dismissed and terminated when fatigue and a sense of impact pain out of the habit;
 - Article 113 paragraph (1) does not discriminate on the dangers of addictive substances in tobacco with in cigarettes. The word addictive substances should be replaced with substances harmful in cigarettes.

[2.5.2] That the Tobacco Control Support Center - Association of Health Indonesia Society (TCSC-IAKMI) proposed as a Related Party and provide written information received by the Court on the day

Tuesday, June 29, 2010, which principally explains as follows:

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- That the draft changes to the Act is approved and / or precisely on September 16, 2009, Related Party along with several community organizations to know if the draft should be sent to the Secretariat of State for review prior to signature by the President, in Article 113 does not include subsection (2) which reads "substance addictive as referred to in paragraph (1) include tobacco, products that tobacco-containing solids, liquids, and gases, which are addictive use can cause harm to themselves and / or community around it";
- That the Related Parties assume if the provisions of Article 113 paragraph (2) of this is a testament to the seriousness and responsibility of concrete forms of government to protect its citizens in general and provide maximum protection for children and adolescents from the dangers of substance Indonesia addictive, especially tobacco and its derivatives, so that with eliminating the verses of this tobacco is a crime;
- That because of the importance of the provisions of Article 113 paragraph (2) of this for the protection of children and adolescents from the dangers of addictive substances, especially bahaya cigarettes, then the Party concerned together with several organizations incorporated in the anti-corruption clause koalitions cigarettes, including the National Commission Child Protection, ICW, and held a press conference related YLKI in the presence of regular and systematic efforts of several persons for eliminate the verse of tobacco;
- That as a form of moral responsibility, the Related Party and the Coalition of Anti-Corruption Clause smoking later reported officially to the Honorary House of Representatives and also to the Jakarta Police.

[2.5.3] Whereas the National Commission for Child Protection (Komnas PA) filed as Related Parties and has given oral and written statement at the hearing on Tuesday, December 14, 2010, which in principally explained as follows:

- That the smoking of tobacco products originated from sources that resulted in direct correlation with the children because of increased prevalence of novice smokers evidenced by the survey data in which the prevalence of children aged 15 years

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to 19 years who smoked in 2001 increased compared to the year 2004;

- That smoking is addictive substances have been metamorphosed into articles as if normal;
- That smoking is a global epidemic and not a normal good and because it is not the normal stuff is not worth to be considered as goods can be traded;
- The provision of Article 113 paragraph (2) that uses the phrase "security use "rather than" removal "and because it is intended

for protection or in the language of the convention referred to as "Securing the use of" or "tobacco control";

- That smoking is a scientific and normative quo has been shown that smoking dangerous even life threatening.

That in his written statement explaining the Komnas PA the following:

A. NO DISCRIMINATION IN PARAGRAPH OF ARTICLE 113 (1), (2), (3) of Precisely HEALTH PROTECTION OF ALL CONSTITUTIONAL RIGHTS CONSTITUTIONAL RIGHTS OF PEOPLE INCLUDING CHILDREN.

The provisions of Article 113 paragraph (1), paragraph (2) and paragraph (3) of Law Number 36 Year 2009 on Health ("Health Law") is a form of

fulfillment of obligations of the state against its people from the threat of danger health, disease and disability and death caused by

tobacco and tobacco products, which has been proven scientifically

the truth. The provisions of Article 113 paragraph (1), paragraph (2) and paragraph (3) Health Act is a realization of the constitutional rights of all people, therefore:

(1) The protection and fulfillment of all the people (right to health) of health and rights of all people of the highest standard of health, which guaranteed in the 1945 Constitution;

(2) Protection and fulfillment as well as answers to the global epidemic of tobacco (the globalization of the tobacco epidemic), so the presence of Article 113 paragraph (1), paragraph (2), and paragraph (3) Health Act as a manifestation of the state's responsibility on the fulfillment of a guaranteed right to health in the 1945 Constitution;

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(3) The protection and fulfillment of the right of all people to life (right to life) and survival rights (right to survival) which is nothing but a right main (supreme rights) which is guaranteed in Article 28A of the 1945 Constitution, therefore based on scientific evidence that consumption of tobacco products and exposure to cigarette smoke is a cause of death and cause various diseases;

(4) protection and fulfillment of children's rights (rights of the child) on life, survival, and protection from violence and discrimination guaranteed in Article 28A and Article 28B paragraph (2) of the 1945 Constitution.

Thus, the provisions of Article 113 paragraph (1), paragraph (2), and paragraph (3) Health Act simply can not be qualified as norms that are discriminatory and

not a violation of the right to justice, because it is

substantial tobacco and tobacco products are addictive and harmful scientifically proven health and even result in death. Protection

all the people of addictive substances that are harmful to health through Article 113 of Law Health is not just attached to the dimensions of discrimination, but instead form realization of the constitutional right to health, right to life and the rights of children guaranteed in the 1945 Constitution.

Very odd according to rational and logical, that efforts to protect the people

including the protection of children from harmful substances postulated discriminatory.

In this case, should be assumed that the applicant is not able to understand the rights constitutional protection of the entire people of the right to health and right to life, survival and the right to grow and develop, including children from dangers of tobacco and tobacco products. The presence of Article 113 paragraph (1), paragraph (2), and paragraph (3) Health Act precisely in order to implement obligations of the state protect all the people and the protection of children.

In the case of tobacco use phrases or terms in Article 113 paragraph (2) of the Act Health, completely irrelevant understood as a form of norm discriminatory treatment or discrimination against one type of plant, in this case tobacco, therefore:

(1) Tobacco and tobacco products based on scientific evidence is the substance is addictive, and therefore should be controls (tobacco

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control). The provisions of the Health Law Section 113 there is absolutely no norms that include textually as an attempt to muzzle the tobacco plants, eliminate tobacco growers or industry. Phrase used it "safeguards the use of" rather than removal use, so it is not true at all there is discrimination, it is right is the protection (protection).

Worry and illusions about the removal of tobacco farming or eliminate tobacco farmers' income is too excessive and hyperbolic because the qualitative normative Article 113 paragraph (1), paragraph (2) and paragraph (3) Health Act did not contain a norm or the original intent abolish or eliminate tobacco tobacco farmers, but true that the norm of the Health Law Section 113 is the norm control impact of tobacco (tobacco control). Very much correlation or causal verband between tobacco control with fear removal tobacco farming.

Approach to economic statistics has actually been able to explain why the reduction in tobacco land area, minimum income tobacco farmers, whereas the income of business owners most jumbo cigarette in the tobacco industry relations.

There are gaps of logic and rationality Applicants who are not careful link as if Section 113 Health Act be causal verband eliminate tobacco farming, reduce farmers' income tobacco and tobacco reduces the land area, raising unemployment due to reduction in labor cigarette products. Even ironically, the Applicant made redundant terlatu Article 113 paragraph (1), paragraph (2), and paragraph (3) Health Act as if a causal verband of indication of the element of criminalization. It's too forced to logic justify an illusion and speculation.

(2) The term used in international conventions as the FCTC (Framework Convention on Tobacco Control) is a tobacco (tobacco) so the use of tobacco in terms of Article 113 paragraph (2) of the Act

Health is in conformity with the norms of international law and hence

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not be discriminatory but rather for the protection and protective fulfillment of the right to health and right to life, survival rights, rights grow and develop;

(3) The formal juridical, terms of use of tobacco is not new and has been used in PP No. 19 of 2003, namely Article 1, point 1, which declared tobacco contains nicotine and tar with or without material Additional "; Article 1, point 2 states" Nicotine is the substance, or compound materials pirrolidin contained in *Nicotiana tabacum*, *Nicotiana Rustica* and species or other synthetic addictive nature can result in dependence ".

Thus the use of the phrase / term tobacco is not new and that certainly not discriminatory and does not violate the laws of justice, because regulation of tobacco control is the constitutional rights of pro-health, right to life, right to survival and growth and development rights the child. Whereas the Petitioners are very accommodating and maintaining PP Number 19 of 2003 [vide page 18 petition], although Health Law Section 116 mandates the creation of Government Regulation (PP), which replaces Regulation No. 19 of 2003 as the implementation Article 113 s.d. Health Law Section 115.

(4) The use of tobacco in terms of Article 113 paragraph (1), paragraph (2), and paragraph

(3) Health Act is not discriminatory because peneraannya intended to

control (tobacco control), which in Article 113 paragraph (1) of

Health referred to the phrase "safety of use". Use

name or term tobacco are also accepted as a universal norm because

used in terms of the FCTC and also in the International Classification of Heart Disease and Related Problems (ISCID 10 WHO 1992) in the F 17 code

which reads "mental and behavioral disorders due to use of tobacco".

So the use of the name / term tobacco was not

discrimination but protection from danger adiksinya;

(5) of Article 113 paragraph (1), paragraph (2), and paragraph (3) Health Act actually no norm prohibit

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use of tobacco or tobacco products as addictive substances, will

but:

(A) Conduct "safety of use" so as not to interfere and endanger the health of individuals, families, communities and environment [Section 113 subsection (1)];

(B) Undertake control over "production, distribution and use of ... That must meet the standards and or requirements "[Section 113 subsection (3)];

(6) of Article 113 paragraph (1), paragraph (2), and paragraph (3) Health Act instead attempt

protection and fulfillment of the constitutional right to health and right to life, survival and development of the child, because in the context ESC rights (economic and cultural problems), the State guarantees (Marshall Ensure) with all our best efforts possible to meet the state children's rights (the maximum extent possible the survival and development), as stipulated in Article 6 paragraph (1) and paragraph (2) CRC.

With the reasons mentioned above, there is no discrimination or violation of justice or violation of right to life of tobacco farmers, and the right to employment and decent livelihood Petitioner argued.

On the contrary the provisions of Article 113 paragraph (1), paragraph (2) and paragraph (3) of Health is a form of protective and fulfillment of all the people of health, right to health standards, and children's rights on survival, grow and develop as well as protection from violence and discrimination in Article 28B paragraph (2) of the 1945 Constitution. In other words, Section 113 Health Act clearly intended to control tobacco (tobacco control), and in no way there are norms that eliminate tobacco (tobacco abolition). Both are very different and very clear juridical qualification.

The original intent and textual Article 113 paragraph (1), paragraph (2), and paragraph (3) of Health as tobacco control, has actually been honestly recognized and justified Petitioner in the Petition (halaman18-19) stated that "... a material containing addictive substances handling done with process control while on Narkotika and Psikotropika handling is through a process of prohibition ..".

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Petitioner's statement is very clear that the true absence and elimination of discrimination against the tobacco plant, but only tobacco control formulated in Article 113 paragraph (1) of Health as a "safety of use", and drafted Article 113 paragraph (3) Health Act requires standardization and / or requirements in production, distribution and use of addictive substances.

Komnas PA as a Related Party put an emphasis on security and protection of constitutional rights of children. Article 28B paragraph (2) of the 1945 Constitution as constitutional reform is a confession and assurance as well as protection of child rights into the constitution, which would become law basis for changing circumstances and a more progressive child protection before the existence of Article 28B paragraph (2) of the 1945 Constitution. Not too much if the 1945 amendments to the increasingly pro children's rights, and on derivation turn children's rights into the Act is a form of compliance with constitutional and characterizes constitutionalism in this country.

Therefore, please allow the Related Parties request that the test material on Article 113 paragraph (1), paragraph (2), and paragraph (3) consider the Health Act Section Paragraph 28B (2) of the 1945 Constitution, which is intended to protect substantive hak-hak children to health, and children's rights on survival, growth and develops and protection from violence and discrimination. In the context of

protection of children, rights of survival and growth and development is the integral and in one breath with the right to life (right to life) which is a primary right (supreme rights) that can not be reduced, although only slightly.

Why is necessary and legitimate constitutional Article 113 paragraph (1), paragraph (2) and paragraph (3) Health Act in particular for the protection of the rights of children? By because the children as vulnerable groups (vulnerable groups) are most at risk against the dangers of addictive substances. In a variety of official data, the prevalence of child smokers is increasing.

FCTC preamble to believe that there is clear research evidence effect of cigarette smoke on babies in the womb can affect health and growth. This is consistent with the truth that
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then dinormakan in Article 8 paragraph (2) Regulation No. 19 of 2003, recognizes smoking can cause ... disorders of pregnancy and the fetus.

FCTC preamble also believe the fact the escalation of smoking and consumption tobacco by children and adolescents throughout the world, especially smoking on young age tends to increase.

In substance, tobacco and tobacco products contain addictive substances, which therefore is not free goods (free goods) but the substance contain hazardous chemicals that are carcinogenic.

It is therefore unlikely memosikannya as free goods that are consumed without securing the use or in terms of the FCTC is referred to as control (Tobacco control). It does not make sense if the position of tobacco and products tobacco is addictive substances [Section 113 subsection (2) Health Act] as free goods such as banana or orange, or aqua water.

So the banana, orange or aqua as appropriate materials needed qualified as free goods, and therefore does not need controlling.

Very different and even contrary to the addictive substance in this tobacco or tobacco products are harmful to health at all consequently a scientifically proven, so the tobacco or product tobacco which is valid and correct dangerous if carried out control or in Article 113 paragraph (1) Health Act known as "security use of".

Conversely, if allowed improper use of tobacco and products without tobacco as an addictive substance because it violates the constitutional rights of health and the right to life, right to survival and growth and development the child. In other words do not exactly use the principle of free choice of each personal (Free of choice) against the use of tobacco and tobacco products because State shall provide protection to the people of the dangers of addictive substances.

On this occasion, let us briefly review the qualifications of tobacco as an addictive substance has been proven scientifically and even industrial tobacco itself acknowledges that there is no safe cigarette (there are no such think as safe cigarettes). Stanton A. Glantz in "The Cigarette Papers"

mention "Moreover, nicotine is addictive. We are, then, in the business of selling
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nicotine, an addictive drug effective in the release of stress Mechanisms. Of the thousand of chemicals in tobacco smoke, nicotine is the most important. Nicotine makes tobacco addictive ".

[Stanton A. Glantz, Cs., "The Cigarette Papers", sub-title "Addiction and Cigarettes as Nicotine Delivery Devices ", University of California Press, 1996, p.. 58].

In positive law, the qualifications of addictive substances ever penormaananya put in the same group as well as liquor, narcotics and psychotropic substances.

(A) of Article 74 paragraph (1) Act No. 13 of 2003 ("Labor Law") menormakan that "It is prohibited to employ and engage children in the worst jobs ".

Furthermore, Article 74 paragraph (2) menormakan that "The works The worst is referred to in paragraph (1) include: a. ... B. .. c. all jobs that use, provide, or involving a child for production and trade of alcoholic beverages, narcotics, psychotropic substances, and substances other addictive and / or; d ".

Of Article 74 paragraph (2) Labor Law concluded that the positive law menormakan that "liquor", "narcotics", "psychotropic drugs", and "substance other addictive "is included in a qualification (of materials or substances) the same material or substance that is prohibited, and dinormakan as prohibited in terms of employment;

(B) of Article 59 and Article 67 paragraph (1) Child Protection Act, children which require special protection, including children who are victims of drug abuse. of alcohol. psychotropic. and addictive substances other (drugs). Thus the Child Protection Act menormakan substance or narcotic substances, alcohol, psychotropic, and other addictive substances (drugs), including the qualification of the type the same.

Because tobacco and tobacco products as an addictive substance that needs to be control or security use [Section 113 subsection (1)] and
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menormakan standardization and / or requirements in terms of production, circulation and use of addictive substances in question, then appropriate if the effort invite others to use, market or introduce a product tobacco is also not justified.

The ratio of legislators in the Health Law Section 113 is very clear and strong for justify the ban on advertising, promotion and sponsorship of tobacco, such as well as the prohibition of advertising of liquor and addictive substances in the norm of Article 46 paragraph (3) letter b of the Broadcasting Act. Very improbable if the cigarette as an addictive substance and carcinogenic still justified advertised.

Urgency of protecting children from the dangers of tobacco and tobacco products is addictive, in fact based on several things:

(1) INCREASED PREVALENCE novice smokers.

That data based on Socio-Economic Survey (NSES) Central Board Statistics (BPS) in 2001 and in 2004 it has been an increase prevalence of children aged 15-19 years who smoked from 2001 (Before the introduction of the Broadcasting Act) as compared to 2004 (After the introduction of the Broadcasting Act). Based on these data Susenas in above, proved the prevalence of smokers in the age group 15-19 years in 2001 by 12.7%, increasing to 17.3% in 2004, There was also a decline in smoking initiation age to age getting younger, ie, in the age group 15-19 years in 2001 started smoking (average) at age 15.4 years, but in 2004 the younger the age started smoking (low) ie at the age of 15.0 years;

(2) Smokers GLOBAL SURVEY BY CHILDREN.

Based on data from the Global Youth Tobacco Survey (GYTS) 2006 which organized by the World Health Organization (World Health Organization) indicates if the 24.5% boys and 2.3% of children women aged 13-15 years are smokers in Indonesia, where 3.2% of this amount has been in a state of addiction and / or addiction;

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(3) SUSENAS Connecticut: INCREASING PREVALENCE novice smokers

An increase in children's smoking at an early age is evident from facts and data from the question "at what age you smoke?" acquired facts (answers), people / children who began smoking at age 5-9 years, in 2001 by 0.4%, while in 2004 increased to 1.7%. So there is an increase in children smoking from the age of 5-9 years by more than 400%. Next person / child started smoking at age 10-14 years, in 2001 by 9.5%, whereas in 2004 increased to 12.6%. Then, people / children of smoking on age 15-19 years, in 2001 amounting to 58.9%, while in 2004 increased to 63.7%;

(4) metamorphosed OF CIGARETTE ADVERTISING AND addictive substances Carcinogenic GOODS AS IF BEING NORMAL.

That the presence of commercial advertising broadcast cigarette promotion (as a form of information or the product of art) that it is not true or at least misleading, in which scientific truths and facts the truth that cigarettes consists of 4000 types of chemicals

and as many as 69 toxic substances of which are carcinogenic, and is addictive.

The nature and definition of juridical-formal commercial broadcast advertising of cigarettes which was intended to persuade consumers to use cigarettes are addictive and contain carcinogenic substances, in various forms of tobacco advertising and message content, has been metamorphosed and unwittingly had infiltrates into the center of consciousness consumers (especially children and teenagers) as if smoking imaged as a normal or usual. So it is no longer are considered hazardous substances that threaten the health and life, and even more than that smoking imaged fraudulently (Fraudulent) and unfair, as the image of "machismo", "valor", "Friendship", "exclusive images", the truth that "no strings attached", and lain lain;

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In fact, the actual cigarette consumption is either empirical facts, scientific (scientific), as well as formal-juridical truth, no indisputable cause of disease cancer, a variety of diseases and health problems, impaired pregnancy and the fetus so that the existence of causality or causal verband led to the emergence of various constitutional rights losses everyone, including children namely the right to life, rights survival, and the right to grow and develop.

(5) CIGARETTE ADVERTISING THAT CHILD trap.

That the cigarette industry in practice often used mechanisms of subliminal advertising is a technique to expose individuals (in this case is children and adolescents) with no individual it knows it is considering the content of the message (message content) was performed repeatedly (occurring reps) which will eventually form a relationship powerful but irrational nature of the emotions with products that advertised. [Presentation Dr. Mary Lisa Japrie, "Advertising and Children", delivered in a workshop on the formation of the Alliance Total Ban, the date. 29 October -1 November 2008, in Depok, held National Commission for Protection of Children];

(6) SMOKING CAUSE DISEASE.

That, from the various sources of scientific reports have been reveals a variety of dangerous threats from smoking in Among other things, cause 90% of lung cancers in men and 70% in women: the cause of 22% of cardiovascular disease blood (cardiovascular); cause of death is developed most fast in the world along with HIV / AIDS, and about 70,000 scientific articles have shown that smoking causes cancer, ranging from oral cancer to bladder cancer, a disease

heart and blood vessels, brain blood vessel disease, chronic bronchitis, asthma and other respiratory diseases; [Tobacco Control Support Center (TCSC) - Association of Public Health

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Indonesia (IAKMI), "Profile of Tobacco Indonesia", Jakarta, 2008, page 16];

(7) CIGARETTE IS A GLOBAL EPIDEMIC.

Even based on the record of the World Health Organization (World Health Organization), smoking is the leading cause of death against 7 of 8 causes of death in the world [WHO Report on the Global Tobacco Epidemic, "M-Power Package", 2008, page 15]. Moreover, the cigarettes that have been defined by health agencies worldwide (World Health Organization-WHO) as a global epidemic (Global epidemic), which not only threatens the health and cause of the disease, but the most terrible of cigarette consumption is the cause of up to 200,000 deaths annually.

[Sarah Barber; Sri Moertiningsih Adioetomo; Abdillah Ahsan; Diahhadi Setyonaluri, "Economics of Tobacco in Indonesia", Institute Fakultas Demographic Economics, University of Indonesia, Jakarta 2008, halaman12].

Associated with the global tobacco epidemic, WHO also noted there are no less than 100 million deaths from tobacco occurred in the 20th century, which if not carried out prevention efforts will increase dramatically to a mortality rate due miiyar tobacco in the 21st century. [WHO Report on the Global Tobacco Epidemic, "M-Power Package", 2008, page 2 and page 4].

For this reason the results of scientific studies and data that it already proven to be factual and rational causality or causal verband emergence of death and / or the threat of death real and serious, including against children and adolescents, so is the fact of violation of right to life, right to survival life, and the right to grow and develop which is a right constitutionally guaranteed in Article 28A, Article 28B paragraph (2) of 1945.

Furthermore, the truth is the truth of the dangers of smoking formal-juridical as PP No. 19 of 2003 which in the

93 Article 8 paragraph (2) recognize the dangers of smoking, ie, "smoking can cause cancer, heart attacks, impotence and disorders pregnancy and the fetus".

The provisions of Article 8 paragraph (2) Regulation No. 19/2003 is legal norms (legal norm) that recognizes the dangers of smoking for threat to health and pregnancy and the fetus. Therefore dangers of smoking is a factual truth that notoire

feiten, as well as a *ius novit Curia* (the court knows the law).

B. PROVISIONS OF ARTICLE 113 OF HEALTH IS A derivation Rights Act

LIFE, GOING ON RIGHT, TITLE AND GROW

DEVELOPING CHILDREN ARE GUARANTEED IN PARAGRAPH OF ARTICLE 28B (2) of 1945.

Whereas, the 1945 Constitution as the supreme law of a reference in the running life of the nation, including in terms of recognition, respect for and protection of children's rights. After the amendment of the in Article 28 paragraph (2) of the 1945 Constitution has explicitly affirmed the rights of constitutional child which reads: "every child shall have the right live, grow and develop, and protection from various forms of violence and diskrimlnasi".

Therefore, the Republic of Indonesia is explicitly acknowledged, respect and protect the constitutional rights of children namely:

- a. right to survival;
- b. the right to grow and develop; and
- c. right to protection from violence and discrimination.

That, with the passing of Article 28B paragraph (2) of the 1945 Constitution that specifically affirm the rights of the child above, the Article 28B paragraph (2) of 1945, guarantees, respect and protect the constitutional rights of children for survival, grow and develop, and protection from violence and discrimination.

That because of Article 28B paragraph (2) of the 1945 Constitution is the result of the amendment constitution and the constitutional reform as such a guarantee,

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respect for and protection of children's rights under Article 28B paragraph (2) 1945 Constitution was accepted and became a constitutional right which is new direction, the highest political decision and the legal basis (fundamentals satat norm) in the fulfillment of child rights and therefore legitimate and perfectly rational if it gives focus and attention to constitutional rights the child.

On the other hand, Article 28B paragraph (2) of the 1945 Constitution, in one verse and chapter ensure an integrated and inseparable right of the child survival (Rights to survival) and the right to grow and evolve (rights to development) and the right to protection from violence and discrimination (rights to protection), must be understood in a unity of inter-related and can not be are separated.

That, because "son" instead of "adult in miniature" but the "child" is a subject that is still vulnerable in the stage capacity development (evolving capacities), which are closely related the causality between the fulfillment and protection of the rights of life and right to survival, the right to grow and develop children and right to protection from violence and discrimination.

In the concrete circumstances, such as disturbance or breach of neglect

of the right to grow and develop children who are not getting good nutrition, malnutrition, malnutrition, fell ill and dangerous infectious disease epidemics, including attacks from the tobacco epidemic and the dangers of smoking lethal (tobacco kills) legally can not only be constitutionally understood in the context of rights to social services and health services course, but understood as a waiver of constitutional rights of children for survival and rights of children grow and develop.

That, it must be stressed that the right to life (rights to life) can not be released to the survival rights (right to survival), and the right to grow and developing (rights to development). Especially against children who are still in its infancy and development, in which each pencideraan, destruction, or reduction of the right to child survival will result serious and fatal to the right to life of children.

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Under the UN Convention on the Rights of the Child [United Nation's Convention on the Rights of the Child (CRC) / Convention on the Rights of the Child (CRC)], is conceptually does not separate between the right to life with the right of child survival and rights of the child grows and develops formulated in one chapter and verse the same time. In fact, recognition of the rights of the child's life is emphasized with recognition of the right to survival (rights to survival) and the right on growth and development (rights to development).

More than that, towards the integration between the rights of the child's life, right to survival children's lives and rights of the child's growth and development, the state guarantees (Marshall Ensure) with all the best efforts possible state (The maximum extent possible the survival and development), as it stipulated in the provisions of Article 6 paragraph (1) and paragraph (2) CRC.

As a State of Law (rechtstaat) that respects and makes rule of law as an orientation, then the harmonization of the instruments international or international convention not only as a form harmonization of law alone.

1945 Constitution has meresepsi basic principles of Human Rights (Human Rights) as one of the requirements of state law, particularly the basic principles of human rights associated with life and living and is a symbol or endeavor

Indonesia in the context of making the nation the 1945 Constitution which became more modern and more democratic; [Penal Law Guide

Constitution of the Republic of Indonesia Year 1945 p. 144, published by the Secretariat General of the People's Assembly Pemsyawaratan, Jakarta, 2005].

Thus, protection and fulfillment of human rights of children contained in the Convention on Rights of the Child and the Framework Convention on Tobacco Control (FCTC) is intended as a condition of state constitutional law.

Therefore, the reception of children's rights in defending Article 113 paragraph (1), paragraph (2) and paragraph (3) Health Act is an effort to carry out the mission State Law adopted in 1945.

Based on the above let us beg the Assembly

Constitutional Court rejected the petition His Majesty the Applicant.

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To reinforce his statement, the Related Parties filed Komnas PA

PT-1 up evidence with evidence of PT-21 as follows:

1. Evidence of PT-1: Copy of Deed of Establishment of the National Commission on Child Protection dated February 17, 1999;

2. Evidence PT-2: Photocopy of Government Regulation Number 19 of 2003 on Security Cigarettes For Health;

3. Evidence of PT-3: Photocopy of Government Regulation Number 19 of 2003 on Security Cigarettes For Health;

4. Evidence of PT-4: Copy of Government Regulation Number 19 of 2003 on Security Cigarettes For Health;

5. Evidence PT-5: Copy of page 16 Profile of Indonesia Tobacco published by the Tobacco Control Support Center (TCSC) - IAKMI in cooperation with the South East Tobacco Control Alliance (SEATCA) and WHO Indonesia;

6. Evidence PT-6: Copy of page 17 Profile of Tobacco Indonesia published by the Tobacco Control Support Center (TCSC) - IAKMI in cooperation with the South East Tobacco Control Alliance (SEATCA) and WHO Indonesia;

7. Evidence PT-7: Copy of page 13 the book entitled "Tobacco Facts The problem in Indonesia "which was published by Tobacco Control Support Center (TCSC) - IAKMI-Center Ecology Research and Development of Health Status;

8. Evidence PT-8: Copy of page 14 of the book entitled "Tobacco Facts The problem in Indonesia "which was published by Tobacco Control Support Center (TCSC) - IAKMI-Center Ecology Research and Development of Health Status;

9. Evidence PT-9: Copy of pages 5-6 of the book titled "Tobacco Facts The problem in Indonesia "which was published by Tobacco Control Support Center (TCSC) - IAKMI-Center Ecology Research and Development of Health Status;

10. Bukti PT-10: Photocopy of a book by Stanton A Glantz, CS, "The Cigarette Papers "subtitles" Nicotine Addiction and Cigarettes as

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Delivery Device "University of California Press, 1996. page

58;

11. Bukti PT-11: Copy of Framework Convention on Tobacco Control (FCTC);

12. Bukti PT-12: Copy of health warnings on packs cigarettes;

13. Bukti PT-13: Copy of the official website of Philip Morris International;

14. Bukti PT-14: Copy of the official website of PT. HM Sampoerna;

15. Bukti PT-15: Copy of the official website of PT. HM Sampoerna;

16. Bukti PT-16: Photocopy of the National Commission on Human Rights Number

1.842/K/PMT/VIII/2010;

17.Bukti PT-17: Video Baby Smoker;

18.Bukti PT-18: Road Map for Tobacco Manufacturing;

19.Bukti PT-19: BFotokopi Cash newspaper clippings about the Labour Clove Cigarettes

"Workers Threatened Clove Cigarettes Hand" Monday, October 18

2010;

20.Bukti PT-20: Book Mardiah Chamim titled "Hypocrisy and Myth in

Behind kedigdayaan Cigarette Industry ";

21.Bukti PT-21: Presentation of Ms. Harkristuti Harkrisnowo entitled "Prohibition

Smoking: The Human Rights? ";

In addition, the Related Party Komnas PA also filed 4 (four)

witness who has sworn and heard testimony at a hearing Wednesday, 5

January 2011, which principally explains as follows:

1. Tony Karundeng

- Witnesses began smoking at age 15 years;
- The witness had suffered a mild stroke and lung cancer in 2010 taxable due to smoking and the witness can not quit smoking. Cigarettes have impact of toxic and addictive;

2. Yanti Koorompis

- Witness starts smoking aged 13 years and had terminal cancer

3B;

- Smoking is highly addictive and child witnesses to be me smoking.

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3. Nani Rohayani

- Witnesses were smokers at the age of 17 years and up to now to eliminating smoking is very difficult to witness because without cigarettes Witness can not work;
- Witness a disease and narrowing of blood vessels and eager to quit smoking but can not.

4. Fuad Baradja

- Witnesses active in the foundation engaged in handling problems Foundation Tackling smoking is the smoking issue served as Head of Outreach and education;
- Child witnesses began smoking at age 13 years until now can not although smoking cessation therapies have been performed by stopping smoking.

[2.6.4] Indonesian Consumers Foundation, Heart Foundation

Indonesia, and Indonesian Cancer Foundation has provided a written statement

and written evidence received by the Court on Thursday, 30

December 2010, and has provided oral testimony on the trial day

Wednesday, January 5, 2011, which principally explains as follows:

Description of the Indonesian Consumers Foundation

- Indonesian Consumers Foundation applied for as Related Parties as to protect the constitutional rights of citizens who

guaranteed Article 28B paragraph (2) of the 1945 Constitution and protect the legal application of Article 113 paragraph (2) Health Act is also intended to protect consumers from dangers of cigarette addiction raw materials derived from tobacco;

- That the Customer is entitled to obtain information that is clear, honest, whole, hazards associated with smoking, the dangers of tobacco to consumers who have to be active smokers, passive smokers and prospective customers (prospective smokers new);
- So far, the information presented through a variety of tobacco industry advertising, promotions, and various other sales efforts do not provide information

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enough about the dangers of tobacco products (cigarettes). Through intensive advertising and the massive, psychologically and sociologically, finally outlook consumers of cigarettes have "upside down" because cigarettes are considered as a harmless product that is consumed;

- Due to the influence of advertising and promotion, consumers actually view that people who smoke are cool, dashing, handsome, beautiful, mighty, excel in sports, and other positive things. Meanwhile, the information about the dangers of smoking is only presented in a narrative sentence is small, so it is not easy to read and captured its meaning by the consumer;
- Therefore, the Health Law Section 113 is the basic normative very strong for consumers to obtain information that is clear, honest, whole about the dangers of smoking to health.

Related Party, the Indonesian Consumers Foundation also filed a tool written evidence marked evidence of PT-1 to PT-9 as evidence the following:

1. Evidence of PT-1: Photocopy of the Indonesian Consumers Foundation Certificate Number 22 dated 25 April 2008;
2. Evidence PT-2: Copy of the Decree of the Minister of Justice and Human Rights Humans No. AHU-2554.AH.01.02.Tahun 2008 on Ratification of the Foundation;
3. Evidence of PT-3: Copy of Certificate of Registration of Consumer Protection Agency (TDLPK) Number 4470/1.824.221, dated August 31, 2005;
4. Evidence of PT-4: Copy of Decision Pembina Consumers Foundation Indonesia Number 02/Pembina/YLKI/2010 of Substitution The time between Board Consumer Foundation Indonesia Period 2009-2014;
5. Evidence PT-5: Copy of Letter No. AHU-AH.01.08-573, concerning the Foundation Consumers institutions Indonesia;
6. Evidence PT-6: Copy of Copy of Decision Number 05 P/HUM/2005 Rights Case Test Material;
7. Evidence PT-7: Photocopy of clipping Tempo, dated February 2, 2011 "Telecommunications Ad Spending Growth Highest";
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8. Evidence PT-8: Photocopy of clipping newspaper Kompas, tanggal February 4, 2011

"Labor Jambu Bol, Kemennakertrans asked to intervene";

9. Evidence PT-9: Copy of "Workers Threatened Hand Clove Cigarettes".

Description Heart Foundation Indonesia

- Heart Foundation Indonesia proposed as due to Related Parties protecting the constitutional rights of citizens guaranteed under Article 28B paragraph (2) UUD 1945 and protects the application of the law of Article 113 paragraph (2) of the Act Also intended to protect the health of the consumer society dangers of cigarette addiction raw materials derived from tobacco;
- Indonesian Heart Foundation is very interested in the existence of the Act Health, particularly Article 113 paragraph (2), because the product globally Tobacco is responsible for 22% of all heart disease and cardiovascular blood vessels. Tobacco is also linked to the incident arteriosclerosis, hypertension, and vascular disorders of the brain. Effects of cigarettes on the heart and blood vessels is increased heart rate, increase blood pressure, constrict blood vessels, coagulate blood, and even cause 75% of coronary heart attack that has been proven scientifically and because it is a fact that can not be denied again truth (notoir feiten);

Related Party Heart Foundation Indonesia also filed written evidence marked evidence of PT-1 to PT-9 as proof of the following:

1. Evidence of PT-1: Photocopy of Certificate No. 1, dated June 2, 2008, Statement Meeting;

2. Evidence PT-2: Copy of Letter No. AHU-AH.01.08-562, concerning the Foundation In the heart of Indonesia English Indonesia Heart Foundation, dated August 29, 2008;

3. Evidence of PT-3: Copy of Supplement, dated 7/7-2009 Number 54;

4. Evidence of PT-4: Photocopy of Certificate of Registration of the Foundation / Agency for Social Number 31.71.06.1004, dated June 25, 2008 Letter of Interest Office 101

Mental and Spiritual Development Social Welfare Central Jakarta municipality of Jakarta;

5. Evidence PT-5: Copy of the Decree of Trustees Center for Heart Foundation Indonesia Number 40/YJI/SK/IV/2008 April 15, 2008 Inauguration of the Central Board of the Heart Foundation Indonesian term of office 2008-2012;

6. Evidence PT-6: Photocopy Tempo newspaper clipping, dated February 2, 2011, "Telecommunications Ad Spending Growth Highest";

7. Evidence PT-7: Copy of Kompas newspaper clipping, dated February 4, 2011, "Labor Jambu Bol, Kemennakertrans asked to intervene";

8. Evidence PT-8: Copy of newspaper clipping "Hand Labor Clove Cigarettes Threatened ";

9. Evidence PT-9: Copy-promotive activities Preventive Heart Foundation Indonesia 2006-2010.

Description Indonesia Cancer Foundation

- Indonesia Cancer Foundation filed a Related Party due to protecting the constitutional rights of citizens guaranteed under Article 28B paragraph (2) UUD 1945 and protects the application of the law of Article 113 paragraph (2) of the Act Also intended to protect the health of the consumer society dangers of cigarette addiction raw materials derived from tobacco;
- It should consumers be protected from the dangers of cigarette addiction that is addictive, carcinogenic (stimulating the growth of cancer), and harmful health and even result in death due to disease ditimbulkannya. This has been proven scientifically and because it is a fact which can not be rejected again the truth (notoir feiten);
- According to statistical data drawn from a variety of hospital data in Indonesia, showed that the 9 (nine) of 10 (ten) patients with lung cancer are heavy smokers. This suggests strongly that the influence cigarette / tobacco for cancer (especially lung cancer) is very strong.

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Besides Indonesia Cancer Foundation Related Party also filed a tool written evidence marked evidence of PT-1 to PT-7 evidence that each as follows:

1. Evidence of PT-1: Copy of Deed of Amendment of Articles of Association of Cancer Foundation Indonesia Number 5, dated June 3, 2008 drawn up before Notary Ati Mulyati, SH, M.Kn.
2. Evidence PT-2: Photocopy of the Director General of General Law Administration Ministry of Justice and Human Rights, through its letter No. AHU-AH 01.08-597, September 10, 2008, regarding the Foundation Cancer Indonesia YKI abbreviated in English is called The Indonesian Cancer Foundation;
3. Evidence of PT-3: Copy of Decree Cancer Foundation Board of Trustees Indonesia Number 002/SK/Pemb/YKI/IV/2006 about Appointment of Board Members of the Indonesian Cancer Foundation The period 2006-2011;
4. Evidence of PT-4: Copy of newspaper clipping Tempo, February 2, 2011, "Ad Spending Growing Telecommunications Highest";
5. Evidence PT-5: Copy of Kompas newspaper clipping, dated February 4, 2011, "Labor Jambu Bol, Kemennakertrans asked to intervene";
6. Evidence PT-6: Copy of "Workers Threatened Hand Clove Cigarettes";
7. Evidence PT-7: Copy of List of Activities "Management Activities Tobacco Indonesia Cancer Foundation (YKI) ".

[2.6.5] Considering that at the hearing on January 5, 2011, Court has heard the statement of Related Party City Residents Forum Jakarta, which principally explains as follows:

- Related Party of a non-governmental organization that has a body law which is the association of Jakarta Residents Forum;

- Related Party as non-governmental organizations have a concern specific or special interest to the city of Jakarta and policy issues development in the city as well as respect and recognition of compliance human rights;

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- That the Law Number 36 Year 2009 on Health is a legal product that has claimed the Related Parties legal recognition, the existence of smoking as an addictive substance. Health Act is also proof that the country has been seriously protect its citizens, particularly in providing protection as a form of execution that are mandated by the Constitution, the Act Of 1945;

- That in a fact, in the process of making the Act Health, which has been endorsed by the president on his way there are those who deliberately want to remove the contents of the provisions of stipulated in Article 113 paragraph (2) which reads "addictive substances" in the Act The Law;

- Related Party has the care, attention, and concern about the intentions the number of parties to eliminate Article 113 paragraph (2) is. Party Linked together with a network of NGOs who are members of the Coalition of Anti-Corruption Clause smoking or Kakar, has reported the incident, ie incidence of loss of Section 113 subsection (2) to the House of Representatives and Honorary Board to the Jakarta Police. Where the Honorary Parliament concluded, if the disappearance of Article 113 paragraph (2), not just a mistake administration alone, but it should be anticipated is a structured effort and planned from a variety of many persons.

Moreover Related Party Jakarta Residents Forum filed written evidence marked evidence of PT-1 to PT-15 evidence as follows:

1. Evidence of PT-1: Copy of Deed of Amendment san Society Forum Residents of Jakarta (FACT) made before Notary Ny.

Siti Meinar Brillianty;

2. Evidence PT-2: Book of the Constitution of the Republic of Insdonesia 1945;

3. Evidence of PT-3: Copy of Article 2 of Law No. 39 of 1999 on Human Rights;

4. Evidence of PT-4: Copy of Government Regulation on Security Cigarettes For Health Chapter I General Provisions;

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5. Evidence PT-5: Photocopy of Government Regulation Number 19 of 2003 on Security Cigarettes For Health;

6. Evidence PT-6: Photocopy of Government Regulation Number 19 of 2003 on Security Cigarettes For Health;

7. Evidence PT-7: Copy Profile Tobacco Indonesia;

8. Evidence PT-8: Copy Profile Tobacco Indonesia;

9. Evidence PT-9: Copy of page 13 the book entitled "Tobacco Facts The problem in Indonesia Year 2009 ";
10. Bukti PT-10: Copy of page 14 of the book entitled "Tobacco Facts The problem in Indonesia in 2009;
11. Bukti PT-11: Photocopy of 5-6 page book entitled "Tobacco Facts The problem in Indonesia in 2009;
12. Bukti PT-12: Fact Sheet "The Impact of Tobacco and its control in Indonesia;
13. Bukti PT-13: Copy of the official website of HM. Sampoerna;
14. Bukti PT-14: Copy of the Special Local Regulation of the Governor of the Capital Jakarta Number 88 Year 2010 regarding Areas Without Cigarettes, Article 1, paragraph (21);
15. Bukti PT-15: Copy of the Provincial Governor Calls Special Capital Region Jakarta No. 6 of 2010 on Reducing Consumption Cigarette.

[2.6.6] Considering that at the hearing on January 5, 2011, Court has heard the testimony of Judge ad informandum Related Parties Sorimuda Pohan, PT. Djarum, PT. H.M Sampoerna, PT. Gudang Garam and Joint United Indonesia Cigarette Factory, which principally explained as follows:

1. Judge Sorimuda Pohan

- All concerned in the year 2004-2009 as a member of the House and committee member Bill on Health. And involved because at that time the Law on Health has been should be done by the amendment because it was too much

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changes since the first Act of the Act No. 23 of 1992;

- That health is a human right, one of the elements welfare to be realized in accordance with the ideals of the nation Indonesia as referred to in the Pancasila and 1945 Constitution;
- That the habit of smoking is an individual need, not classified on human rights;
- Any activity in an effort to maintain and improve the degree of public health is conducted with the highest principle of non-discriminatory, participatory, and sustainable in order the establishment of Indonesia's human resources and improve resilience and competitiveness of the nation for national development;
- That every thing that causes health problems the people of Indonesia, would have caused economic losses great for the country, and every effort to improve health status society is also interpreted as inverstasi for development of the country. Experts in health economics and the ground water has been calculated since longer publish that losses can be caused by

Rooms 4 to 5 times the amount of tax revenues by the state;

- That every effort should be based on the insight development health, in the sense of national development should be noticed Public health is the responsibility of all parties, both industrialists, farmers, health workers, government and the community.

2. PT. Djarum

- PT. Djarum is a national private company that stands under the laws of the Republic of Indonesia and domiciled in the law Indonesia;

- PT. Djarum felt treated as if the illegal industry.

So with the enactment of the a quo article makes the industrial world tobacco feel anxious, threatened, anxious and uncomfortable result in conducting business;

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- Article 113 paragraph (2) of Law Number 36 Year 2009 on Health for PT. Djarum will threaten, harm and not will possibly have an impact on business continuity and workers PT.Djarum.

3. PT. Sampoerna H.M

- PT. HM Sampoerna does not fully support the provision of tobacco Law No. 36/2009 on Health is pasted on the last moments of the trial the House Year 2004-2009, due to provisions does not consider the interests of all parties concerned.

Therefore, PT. Sampoerna welcomed the decision of the House to answer some of the shortcomings of the Health Act by entering Control Act Impact Products

Tobacco in Prolegnas priority for trial in 2011;

- PT. HM Sampoerna nor its parent company has been declared and communicate openly that tobacco products are addictive;

- When Section 113 was passed through the Health Act, currently Ministry of Health is working on government regulations one of its provisions would prohibit the tobacco industry in total to communicate its products to adult consumers.

In fact as a legal product, tobacco industry has the right to communicating to consumers through media channels and communication available;

- Article 113 of Law Number 36 Year 2009 on Health, can be considered discriminatory because it only mentions tobacco as an addictive substance that must be regulated by the Government.

4. PT. Gudang Garam

- PT. Gudang Garam employs 37,000 employees and any decision issued by the Government to consider

the fate of the employee;

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- If the tobacco industry banned advertising will lead to a status quo for brands that already exist in the sense would be very difficult create new brands appear if a large enterprise or small firms;

5. Joint United Cigarette Manufacturing Indonesia (GAPPRI)

- The fact of history, already 100 years journey clove;
- Clove has a strong influence on the resilience of social, political, economic evenly;

- GAPPI is an association which is responsible for viability of the overall economic development. Yet the material can not be denied there are many groups domestik both dominant and able to monopolize international way of a power. Dominant groups has

many broad access, on the economic resources and political often made it impossible for the realization of the rule of law;

- GAPPI fear of the three national pillars at stake; Sovereignty politics of law in which the dominant groups both domestically and internationally, which can monopolize the road to power which may affect the regulation. Economic independence, seeking domestic industry that economic independence can be aligned with clove is currently difficult to find even supposing excise revenue can set aside 10 years and 15 years, the country's debt can be paid.

Kretek form of work indigenous entrepreneurs once the Indonesian nation colonized, oppressed, and then be able to continue the efforts of actors economy of the colonial past, then now would dumped just like that makes it very restless;

In addition, the Related Parties GAPPRI also filed written evidence in the form evidence of PT-1 to PT-8 evidence as follows:

1. Evidence of PT-1: Photocopy leave the pack behind;
2. Evidence PT-2: Copy of Nicorette Sales USA;
3. Evidence of PT-3: Copy of Nicotine Replacement Therapy;
4. Evidence of PT-4: Copy of World Smoking-Cessation Drug Market 2010-2025;

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5. Evidence PT-5: Copy of Public Smoking Bans Are Necessary;

6. Evidence PT-6: Copy of Smoking Out The Truth;

7. Evidence PT-7: Copy of prejudice and propaganda;

8. Evidence PT-8: Copy of what we fund.

[2.7] Considering whereas the Court at the hearing Tuesday, 8 February 2011, has stated to the Applicant, the Government, the Council House of Representatives, and the Parties Related to convey conclusions writing at least 1 (one) week from the trial day Tuesday, February 8

2011, referred to;

That the applicant submit written conclusions dated 14 February 2011, the Court received on Tuesday, March 15

2011 which essentially remains in his stance;

The conclusion that the Government submit written dated June 30

2011 for the case Petitioner in case Number 19/PUU-VIII/2010, which received by the Court on Thursday, July 21, 2011 which in

just stick with the establishment;

Related Party that the Indonesian Consumers Foundation, the Foundation Heart of Indonesia, and Indonesia Cancer Foundation convey the conclusions

Written dated February 14, 2011 the Court received on

on Wednesday, February 16, 2011, which essentially remains in his stance;

Related Party that the National Commission for Child Protection delivered

Conclusions Written dated February 16, 2011, which received the Registrar's Office Court on Monday, February 21, 2011, which essentially fixed by

establishment;

That the Related Party expressed Jakarta Residents Forum

Conclusions Written dated February 17, 2011, which received the Registrar's Office Court on Thursday, February 17, 2011, which essentially fixed by

establishment;

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[2.8] Considering whereas to make a description in this decision, then everything that happens at the hearing sufficiently designated in the news trial event and an integral part of this decision;

3. LEGAL CONSIDERATIONS

[3.1] Considering whereas the purpose and objective of the petition is regarding the substantive testing of Article 113 paragraph (1), paragraph (2), and paragraph (3) Law Number 36 Year 2009 regarding Health (State

Indonesia Year 2009 Number 144, Additional State Gazette

Indonesia Number 5063, hereinafter referred to as Law 36/2009) to the Opening (Preamble), Article 27, Article 28A and Article 28I of the Constitution of the State Republic of Indonesia Year 1945 (hereinafter referred to as 1945 Constitution);

[3.2] Considering whereas prior to considering the purpose thereof, Constitutional Court (hereinafter referred to as the Court) will consider advance the following matters:

a. authority of the Court to examine, hear and decide petition a quo;

b. legal status (legal standing) The applicant;

Against both cases, the Court argued as follows:

Authority of the Court

[3.3] Considering whereas pursuant to Article 24C Paragraph (1) of the 1945 Constitution which again mentioned in Article 10 paragraph (1) letter a of Law Number 24 Year

2003 regarding the Constitutional Court, as amended by Act

Number 8 Year 2011 regarding Amendment to Law Number 24 Year

2003 regarding the Constitutional Court (State Gazette of the Republic of Indonesia Year

2011 Number 70, Additional State Gazette Republic of Indonesia Number 5226,

hereinafter referred to as the Constitutional Court Law) and Article 29 paragraph (1) letter a of Law No. 48 Year 2009 on Judicial Power (State Gazette of the Republic

Indonesia Year 2009 Number 157, Additional State Gazette

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Indonesia Number 5076), one of the Court's constitutional authority is tested against the Constitution Act 1945;

[3.4] Considering whereas the petition a quo is about testing Law Law in this Law 36/2009 on the 1945, so that the Court authority to examine, hear and decide upon the a quo; The Status Law (Legal Standing) The applicant

[3.5] Considering whereas pursuant to Article 51 paragraph (1) of the Constitutional Court and its The explanation, which can act as Petitioner in testing a Law against the 1945 Constitution are those who consider the rights and / or authorities affected by the enactment of the Act petitioned for review, namely:

- a. individual Indonesian citizens (including groups of people have an equal interest);
- b. customary law community unit along still alive and in accordance with development of society and the principle of the Unitary Republic of Indonesia stipulated in the Act;
- c. public or private legal entities; or
- d. state institutions;

Thus, the Petitioner in the testing of the Act against the Constitution 1945 to explain and prove first:

- a. position as the applicant as referred to in Article 51 paragraph (1) Constitutional Court Law;
- b. existence of constitutional rights and / or authorities granted by Caused by the 1945 enactment of the Act which petitioned for review;

[3.6] Considering whereas since the Court's Decision Number 006/PUU-III / 2005, dated May 31, 2005 and Decision Number 11/PUU-V/2007, dated 111

20 September 2007 and subsequent decisions have held that constitutional rights and / or authorities referred to in Article 51 Paragraph (1) of the Constitutional Court must meet five conditions, namely:

- a. the rights and / or authorities granted the applicant by the 1945 Constitution;
- b. rights and / or constitutional authority by the applicant is considered impaired by the enactment of Law petitioned for review;
- c. constitutional rights and / or authorities must be specific and actual or at least potential are based on logical reasonable will certainly take place;
- d. a causal relationship (causal verband) between the loss with the enactment of Law petitioned for review;
- e. the possibility that the petition is granted, then constitutional rights and / or authorities as it is postulated will not or no longer occur;

[3.7] Considering whereas the Petitioner argues that as individual citizens Indonesia's state constitutional rights have been impaired by the enactment Article 113 paragraph (1), paragraph (2), and paragraph (3) of Law 36/2009, which states: Section 113

(1) Safeguarding the use of materials containing addictive substances directed so as not to disturb and endanger the health Individuals, families, communities and the environment.

(2) addictive substance as referred to in paragraph (1) include tobacco, containing tobacco products, solid, liquid, and gas addictive nature of its use can cause harm to himself and / or surrounding community.

(3) Production, distribution, and use of materials containing substances addictive must meet the standards and / or requirements set.

Petitioner further argues that which principally as the following:

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- Petitioner as the person who is concerned about pertembakauan and Indonesian clove and a mandate to represent a few heads village and villagers whose background County Waterford life as a producer of tobacco and cloves that became pedestal and hope and drive the economy of the community Waterford District;
- Applicant has given mandate to the Legislative Assembly and one its job is to make the Act. By not doing the task and obligations of Members of Parliament in the process is right and good associated with formation of the a quo Law 36/2009, the applicant could potentially harmed the rights constitutional;
- Applicant is a citizen taxpayer, so that the rights and Applicant adrift interests also with the Health Act discussion a quo that the process of formulation financed by the state derived from income tax already paid the Petitioner as well as the cigarette tax and tax the fruits of tobacco and clove farmers and laborers Indonesia cigarette manufacturers and other concerned parties;
- Petitioner argues that a rice field about 2 hectares, which the rice cultivators plant species are often planted with Tobacco Fields. By therefore, the effect of Article 113 paragraph (1), paragraph (2), and paragraph (3) of Health a quo, according to Petitioner, gave rise to legal uncertainty and misgivings suffered material loss in case of no plant tobacco;
- The right to life enshrined in Article 27 paragraph (2), Article 28A and Article 28I 1945 Constitution. Therefore, the farmers of tobacco, clove farmers, and factory workers in Indonesia and other parties associated with the pertembakauan also have the same right to life so that planting tobacco and clove farmers is an obligation to continue to thrive;

Whereas under the provisions of Article 51 paragraph (1) of the Constitutional Court and the terms constitutional rights and / or constitutional authority as described above,

Court argues that the Petitioner as an individual citizen

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Indonesia has the right and / or constitutional authority as provided for in Article 27 paragraph (2), Article 28A, and Article 28I of the 1945 Constitution which, according Applicant, aggrieved by the enactment of Article 113 paragraph (1), paragraph (2), and paragraph (3) of 36/2009. Therefore, the applicant has a prima facie legal status (legal standing) to file the petition a quo;

[3.8] Considering whereas since the Court has the authority to examine, hear and decide upon the a quo, and Petitioner has law (legal standing), the Court will further consider

the purpose thereof;

Principal Petition

[3.9] Considering whereas the Petitioners in their petition filed substantive testing of Article 113 paragraph (1), paragraph (2), and paragraph (3) of Law 36/2009, which essentially questioned the constitutionality of articles of Law 36/2009 which regulate and establish tobacco and products containing tobacco as an addictive substance that can cause harm and should be regulated the production, circulation, and its use;

[3.10] Considering whereas the Court has examined the written evidence that filed by the Applicant (Exhibit P-1 through Exhibit P-9) to prove his arguments that the complete list is described in section Sitting Case above;

That the Court has heard the testimony of witnesses offered by the Applicant, which essentially states the following:

1. H. Parmuji

Tobacco has become the foundation of life since the ancestors and is the source of the main quest of the economy;

tobacco cultivation involves many parties, not just farmers tobacco;

2. H. Mulyono

Witness is concerned that the main livelihood as farmers tobacco is threatened;

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3. Tri Yuwono

The majority of residents in the Village Kledung as tobacco farmers will loss of livelihood is threatened by the enactment of Article 113 of Law 36/2009 and this is incompatible with poverty alleviation

Government poverty;

4. Karyanto

In Pamekasan 35 000 hectares of land planted with tobacco. In Sumenep 28 000 hectares of land planted with tobacco. In

Sampang District 18 000 hectares of land planted with tobacco;

In Pamekasan, Sumenep, and Sampang, tobacco is a commodity crop that has been long and into plants turuntemurun which can not be separated by farmers who live and death dependent on tobacco plants;

Thanks grow tobacco, tobacco farmers can send their son and sufficient life;

If tobacco farmers can not or should not grow tobacco will make the economy worse;

5. Sumadi Danartono

That the witness as the Head Wonolelo Village, Sawangan, Magelang. Witness

Witnesses testified that in the village, 95% of the population are farmers and during the dry season, plants are plants that can live

tobacco plants that are the backbone of the economy community;

6. Udi Revelation

Witness Pagerejo as Village Chief, District Wonosobo, which

Witnesses testified that in the regions, tobacco is a commodity

50% excellent results go to the manufacturer's products and 50% other

a craft in the form of tobacco or tobacco grate

asapan;

7. Subakir

□ All the villagers in the Witness is a tobacco farmer

has a total area of 400 acres more or less;

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□ tobacco plants producing the best quality tobacco in the world that serintil called tobacco;

Tobacco □ serintil is needed by clove cigarette factories original Indonesia;

8. Agus Setyawan

Witness □ Tretep as village head. Witness was born and raised from the results tobacco grown by tobacco farmers as their father;

Witness □ feel aggrieved when Article 113 of Law 36/2009 states only tobacco as an addictive substance;

9. dr. Subagyo

□ Witness had suffered a bump on the lower jaw operated with result of a malignant lymphoma or cancer of the lymph nodes;

Witness □ aware of any information handling or treatment of jerky therapy to define nanoscale cigarette;

10. Allan Sulistiono

Witness □ diagnosed with stage 3 liver cancer;

Witness □ jerky therapy with tobacco use and the results was normal.

That the Court has heard and read the Expert filed by the Petitioner, which essentially states the following:

1. Josi Ali Arifandi

□ That the planting of tobacco in Indonesia has been going on in the area whose location specific and have specific quality characteristics known to the market and consumers that can not be replaced with from the cultivation of tobacco products in any other field sites;

□ That tobacco is a huge source of revenue for farmers / planters on marginal land that is at a certain season (Dry season) when other plants have been unable to produce or its economic value is under tobacco;

That □ for the country, the tobacco industry has contributed excise, taxes, and foreign exchange increased steadily from year to year, which in the year 2008 reached the range of Rp. 57 trillion;

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2. Mukti Ali Imran

That □ addictive substances are classified or grouped into types narcotics, psychotropic and other addictive substances or often called drugs;

□ Whereas Article 113 paragraph (2) of Law 36/2009 has indirectly reduce the meaning of the addictive substance in tobacco is limited only only and derived products in all phases (solid, liquid, and gas). Whereas Tobacco is not the only substances that have addictive properties. This is gives the sense of bias;

That □ to determine the effect of a substance addiction or comparison addiction to other substances, must go through an empirical study

approach combines factual data-qualitative-quantitative;

□ use of the word "addictive substance" in a material, preferably, or should be accompanied with the classification of these addictive type, whether the stimulant, depressant, hallucinogen, and others so clearly for consumers;

3. Gabriel Mahal

□ Nicotine from tobacco can not be patented because it comes from nature.

What can be patented is a nicotine delivery (nicotine delivery device) and therapeutic compounds that contain nicotine as an ingredient

The main produced by multinational pharmaceutical corporations. In

Herein lies one of interest to control or shut down

tobacco and cigarettes;

□ provisions of Article 113 of Law 36/2009 is one form of implementation of the Tobacco Free Initiative Project with the agenda of anti-global tobacco, the Indonesian national law;

Killing □ tobacco with all the industry in Indonesia, including other related industries, will lead to rising unemployment people of Indonesia. Every 10% increase in unemployment causes deaths rose to 1.2%, 1.7% of heart attacks and life expectancy reduced by 7 years;

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4. Rinaldo Prima

□ Whereas Article 113 of Law 36/2009 can provide insight "Misleading", because it is tendentious to form opinions and while providing a stigma that only tobacco-containing addictive substance, but still very much the kinds of plants and products that contain addictive substances;

□ Whereas Article 113 of Act a quo to be discriminatory and at once can lead to legal uncertainty, so contrary to the principle of justice and the principle of equality in law and government;

□ It is most likely the provisions of Section 113 of Act a quo contradictory or at least less in line with the Law Law Number 10 Year 2004 on the Establishment Regulation Legislation;

□ Whereas Article 113 of Act a quo contains the same formulation did not provide "legal protection" for tobacco farmers. Conversely, in a discriminatory way, has contributed to legal protection to farmers who grow other crops that contain addictive substances;

□ Whereas the provisions of Article 113 of Law 36/2009 is contradictory to Article 27 paragraph (1), Article 28D paragraph (1), Article 28F, and Article 28I paragraph (2) of the 1945 Constitution;

5. Prof. dr. Moch Aris Widodo MS., SpFK., Ph.D

□ Smoking, based on experimental evidence and clinical evidence, can not be accused as the sole cause of pain, because not all smokers suffering from lung cancer or coronary heart disease, being who do not smoke can be affected by both diseases;

□ Tobacco in some ways similar to alcohol. Both materials it may be circulated freely in the market. What is different is the effect alcohol can cause acute poisoning that is often deadly

even death can occur not because of alcohol but because of the traffic accidents;

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□ Burning tobacco leaf in cigarettes produce a 4000 material chemicals, including nicotine. Nicotine effects on neurons, or nerve the brain that causes people to want to smoke cigarettes again, known as addiction. Nicotine also causes an increase in contraction and increased heart rate and blood pressure;

6. Sutiman B. Sumitro

Experts concerned about the issue □ clove cigarettes are part of the scenario multinational companies, whose activities are focused in short-term to annex the local tobacco industry began to square off switch core business. Therefore, experts suggest which essentially as follows:

1. Conduct research to truly measure the impact of smoking especially clove;
2. The tobacco industry should be encouraged to have research units and adequate development with the aim to develop technology kretek cigarettes are healthier and healthier;

7. Dr. dr. Jack Roebijoso, MSc

□ Tobacco and nicotine are grouped in a material that can addictive effects, but the addictive impact on health (Medical, psychological, and social), still fairly easy to overcome and not effect "addiction" such as narcotic substances;

□ discovery and technological advancement of the health impact control cigarettes (nano technology to filter cigarettes) and the model of health services that empowers people (Indonesian-style family doctor), will become a valuable commodity to the advancement of technological development fabrication of cigarettes, medicine, and health in the future for economic interests and development of health / medicine in Indonesia;

□ health risk factors never singular and always multifactorial, so that the tobacco or smoking is not a major cause (Causal factor) for a variety of diseases and deaths;

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□ There are still opportunities to educate and advocate for health reducing or eliminating the impact of health risk factors for purpose of preventing the event of sickness and death from a particular disease;

□ Article 113 of Law 36/2009 on which to base policy of removing commodity tobacco and cigarettes, not to be the right policy objectives for Indonesia at this time;

□ Tobacco, cigarettes and even health impact control technologies Indonesia will become a mainstay export, at a later date.

[3.11] Considering whereas the Court has heard and read government statement which essentially explains that the existence of Article 113 paragraph (1), paragraph (2), and paragraph (3) of Law 36/2009 a quo is a *conditio sine qua non* because it is fundamental to achieving strong objectives of health development in general. Security arrangements Substance Addictive in a quo Law 36/2009 has been mandated by the Constitution, mainly in order to increase awareness, willingness, and ability to live healthy

for everyone to manifest degrees of maximum public health as an investment for the development of human resources socially and economically productive which is an integral part of national development objectives as stated in the Preamble 1945 Constitution;

That the Court has heard the testimony of witnesses offered by the The government, which essentially states the following:

1. Rima Melati

Witness □ a smoker and as a result of cigarette addiction, witness ill end-stage cancer;

2. Yanti Sampurna

Witness □ husband died after smoking for 40 years and can not be quit smoking until his death. The witness's husband suffered from lungs cancer with the discovery of typical cells as a result of cancer cells smoking;

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3. Pa Iswanto

□ Witnesses are tobacco farmers since 1970 and has enjoyed the results Tobacco is by setting up home and have a bike motors;

□ witness as tobacco farmers worried that if the tobacco removed, it will lose their livelihoods;

That the Court has heard and read the Expert proposed by the Government, which essentially states the following:

1. Prof. Dr. Amir Syarief

□ After smoking tobacco, there is nicotine in the blood. Smoke tobacco can cause health problems that cause cancer of the lung, oral cavity, pharynx, larynx, and isofagus which can cause problems in blood vessels of the heart and brain. Woman pregnant may experience abortion and congenital abnormalities in the fetus; Nicotine is the addictive substance classified □. Nicotine contained in tobacco, in levels are quite large. Cigarettes contain nicotine that tobacco tobacco smoke can cause psychological dependence, physical, and tolerance. Tobacco smoke contains chemicals that can trigger the occurrence of cancer, lung disease, and disorders other health;

2. Dr. Widyastuti Soerojo

That □ Law 36/2009 provides protection for all citizens society without exception according to the mandate of the 1945 Constitution;

□ Protection against tobacco products as addictive substances are not prohibit tobacco farm, especially deadly eye livelihoods of farmers and not against the 1945 Constitution;

□ addictive nature of nicotine is very strong on. Studies show that smoking cessation is more difficult than stopping heroin addiction and cocaine. The existence of 60 million active smokers in Indonesia at this time, already guarantee the continuity of tobacco farming indicates some the coming decade.

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3. Ahmad Hudoyo

□ Tobacco can be used as preservatives of preservatives for flavor,

for wood, and can be used to dye silk;

□ leaf tobacco, the results of research, can be used as a drug diabetes, and if it can be genetically engineered anti-cancer;

□ Tobacco leaves can become an idol of the physician geneticists and specialists biology popular because it is the leaves that are most easily fabricated, rapidly changing nature of DNA, making it very efficient for penelitianpenelitian.

4. Arini Setiawati

□ Nicotine in cigarettes is not so dangerous and far more secure than smoking. Nicotine poisoning in small quantities, much safer than smoking. Substances in tobacco smoke that is dangerous because it contains toxic and cause cancer;

□ Passive smokers inhale secondhand smoke are dangerous, but not get pleasure as experienced by active smokers, so it would be unfair if a father smoked, while his wife and children have to inhale cigarette smoke;

□ active Smokers should quit smoking so as not to have disease dangerous, because the light and moderate smokers, the same death with heavy smokers.

5. Abdillah Ahsan

□ That expert has conducted studies in Kendal, Bojonegoro, and Lombok The east. Experts have been interviewed as many as 450 respondents Hodge people and farmers have interviewed 66 managers which principally stated as follows:

- They complain that the tobacco plantation business is very at risk because tobacco is a crop grown in the dry season or rainy season. If planted in dry season, and harvest when the rainy season, it can damage the quality of tobacco;

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- There is a change in price determined by middlemen, graders;

- There is a plant pest;

- There was a decrease in the purchase, because the main buyers of tobacco leaf is the cigarette industry. If the tobacco industry does not want to buy, then tobacco is not known to what use.

6. Fattah Ahmad Wibisono

□ That said smoking or cigarettes are not listed in the Qu'ran;

Both □ which postulates postulating makruh or haram, point temunya is equally want the activity stopped smoking;

□ If people smoke, meaning that the person does not maintain health, did not keep his soul, as a major goal Shari'a, the main goal of Islam;

[3.12] Considering whereas the Court has read the statement of the House of essentially states that Article 113 of Law 36/2009 has been in line with Indonesia is the nation's goal to improve community health status which is part of human rights and is one element welfare to be realized in accordance with the ideals of the Indonesian nation as stated in the Preamble to the 1945 Constitution. Therefore, the provisions Article 113 of Law 36/2009 did not conflict with the Preamble (Preamble), Article 27, Article 28A, and 28I of the 1945 Constitution;

[3.13] Considering whereas the Court has also heard and read description of the Related Party, as well as check written evidence submitted by the Related Party, which principally explains as follows:

1. dr. drh. Mangku Sitepoe

- That which is harmful to health is not the smoke rokok tobacco;
- Preparation of the Act does not distinguish between tobacco with cigarette smoke;
- Cigarette smoke consists of white and kretek cigarettes which white as the standard for containing health hazards

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Whereas 100% tobacco cigarette contains 60% tobacco and 40% of cloves;

- That smoking is not the cause of death but stimulate disease which can lead to certain death;
- Not all harmful addictive substances, for example, theobromine in chocolate;
- According to the dictionary of medicine in Indonesia, the addictive substance is a substance or substances that cause physiological needs that cause dependence. Another sense, the addictive substance is a drug or substance, if consumed by living things cause biological activity, encourage dependency, and addiction is hard dismissed, and when dismissed an impact fatigue and pain in the outside habit;
- Article 113 paragraph (1) does not discriminate on the dangers of addictive substances in tobacco with the addictive substance in cigarettes. The word "addictive substances" should be replaced with "harmful substances in cigarettes".

2. Tobacco Control Support Center - Association of Public Health Indonesia (TCSC-IAKMI)

- The provision of Article 113 paragraph (2) of Law 36/2009 is a testament to the seriousness and concrete form of government responsibility to protect citizens country in general and provide maximum protection Indonesia for children and adolescents from the dangers of addictive substances, especially tobacco and its derivatives, so that by eliminating ayatayat This tobacco is a crime.

3. National Commission for Child Protection (Komnas PA)

- That the smoking of tobacco products originated from sources that resulted in direct correlation with the children because the prevalence of novice smokers increased as evidenced by the survey data in which the prevalence of children aged 15 to 19 years who smoked in 2001 to increase the in 2004;
- That smoking is an addictive substance that has morphed into goods that seemed to be normal;

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- The provision of Article 113 paragraph (2) of the Act a quo who use the phrase "safety of use" rather than "removal" is intended is to protect, or in the language of the convention called "tobacco control ";
- That smoking quo has proven scientific and normative dangerous even life threatening;
- Whereas Article 113 of Act a quo is for the fulfillment of

obligations of the state against its people from the threat of health hazards, various diseases, and disability and death caused by tobacco and tobacco products, which has been proven scientifically the truth;

- Article 113 paragraph the Act a quo was not discriminatory and not a violation of the right to justice, but rather a form of realization constitutional right to health, right to life, and children's rights are guaranteed in the 1945 Constitution;

Moreover Related Party National Commission for Child Protection filed written evidence in the form of Exhibit PT-1 to Exhibit PT-21 that are complete have been listed in the Sit and also filed Case 4 (four)

Witnesses who have been sworn and heard testimony in trial, which principally explains as follows:

I. Tony Karundeng

- Witnesses began smoking at age 15 years;
- The witness had suffered a mild stroke in 2010 and lungs get cancer

Witnesses from cigarettes and can not quit smoking. Cigarette have toxic effects and addictive;

II. Yanti Koorompis

- Witness starts smoking aged 13 years and had terminal cancer

3B;

- Smoking is highly addictive and child witness to be me smoking.

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III. Nani Rohayani

- Witnesses were smokers at the age of 17 years and up to now to eliminating smoking is very difficult to witness because the witness without cigarettes do not can work;

- Witness a disease and blood vessel constriction and wanted to quit smoking, but can not.

IV. Fuad Baradja

- Child witnesses began smoking at age 13 years now, and not can quit smoking despite smoking cessation therapy.

4. Indonesian Consumers Foundation

- That the Customer is entitled to obtain information that is clear, honest, and intact, the dangers associated with smoking, the dangers of tobacco to consumers who has become active smokers, passive smokers and prospective customers (prospective new smokers);

- So far, the information presented through a variety of tobacco industry advertising, promotions, and various other sales efforts do not provide information enough about the dangers of tobacco products (cigarettes). Through intensive advertising and the massive, psychologically and sociologically, finally outlook consumers of cigarettes have "upside down" because cigarettes are considered as a harmless product that is consumed;

- Due to the influence of advertising and promotion, consumers actually view that people who smoke are cool, dashing, handsome, beautiful, mighty, excel in sports, and other positive things. Meanwhile, the information

about the dangers of smoking is only presented in a narrative sentence is small, so it is not easy to read and captured its meaning by the consumer;

- Therefore, Article 113 of Law 36/2009 is the basic normative very strong for consumers to obtain information that is clear, honest, and piece about the dangers of smoking to health.

Whereas in addition, the Related Parties Indonesian Consumers Foundation also submit written evidence in the form of Exhibit PT-1 to Exhibit PT-9 which is complete has been listed in the Sitting Case;

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5. Heart Foundation Indonesia

- That the global tobacco products is responsible for 22% of all heart disease and cardiovascular blood vessels. Tobacco also associated with the incidence of arteriosclerosis, hypertension, and impaired brain blood vessels. Effects of smoking on the heart and blood vessels are increased heart rate, increased blood pressure, constricts blood vessels, thicken the blood, and even the cause of 75% attack Coronary heart that has been proven scientifically and because it is a fact which can not be rejected again the truth (notoir feiten);

Whereas in addition, the Related Parties Heart Foundation Indonesia also submit written evidence in the form of Exhibit PT-1 to Exhibit PT-9 that is completely contained in the Sitting Case;

6. Indonesia Cancer Foundation

- That the consumer should be protected from the dangers of cigarette addiction is addictive, carcinogenic (stimulating the growth of cancer), and endanger health or even lead to death from the disease it causes. This has been proven scientifically and because it is a fact which can not be rejected again the truth (notoir feiten);

- According to statistical data drawn from a variety of hospital data in Indonesia, showed that the 9 (nine) of 10 (ten) patients with lung cancer are heavy smokers. This suggests strongly that the influence cigarette / tobacco for cancer (especially lung cancer) is very strong.

Whereas in addition, the Related Party Indonesia Cancer Foundation also filed written evidence in the form of Exhibit PT-1 to Exhibit PT-7 which are Detailed Seating has been listed in the section on Case;

7. Jakarta Residents Forum

- That the Law 36/2009 is a legal product that has provided legal recognition, the existence of smoking as an addictive substance and also is evidence that the state has serious about protecting its citizens as mandated by the 1945 Constitution;

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- That the facts, in the process of making the Act a quo that has been ratified by the President, there are those who deliberately removes content of the provisions contained in Article 113 paragraph (2) which reads "addictive substance". Related Party along with a network of NGOs who are members of the Coalition of Anti-Corruption Clause smoking or Kakar, has reported the incident to Parliament and of the Honorary Police of Metro Jaya. Honorary Board House of Representatives concluded, if the disappearance of Article 113 paragraph (2) is not just mere clerical error, but an effort should be assumed structured and planned from a variety of many persons.

Whereas in addition, the Related Party Jakarta Residents Forum filed a tool written evidence in the form of Exhibit PT-1 to Exhibit PT-15 is in full Seating has been included in the Case;

[3.14] Considering whereas the Court has heard testimony Parties Related to the Judge ad informandum Sorimuda Pohan, PT. Djarum, PT. H.M Sampoerna, PT. Gudang Garam Cigarette Factory and the Joint United Indonesia, which principally explains as follows:

1. Judge Sorimuda Pohan

- That health is a human right, one of the elements welfare to be realized in accordance with the ideals of the nation Indonesia as referred to in the Pancasila and 1945 Constitution;
 - That the habit of smoking is an individual need, not classified on human rights;
 - Any activity in an effort to maintain and improve the degree of public health is conducted with the highest principle of non-discriminatory, participatory, and sustainable in order the establishment of Indonesia's human resources and improve resilience and competitiveness of the nation for national development;
 - That every thing that causes health problems the people of Indonesia, would have caused economic losses great for the country, and every effort to improve health status
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society is also interpreted as inverstasi for development of the country. Experts in health economics and the ground water has been calculated since longer publish that losses can be caused by cigarette is four to five times the amount of tax revenues by the state;

- That every effort should be based on the insight development health, in the sense of national development should be noticed Public health is the responsibility of all parties, both industrialists, farmers, health workers, government and the community.

2. PT. Djarum

- PT. Djarum is a national private company that stands under the laws of the Republic of Indonesia and domiciled in the law Indonesia;
- PT. Djarum felt treated as if the illegal industry. So with the enactment of the a quo article makes the industrial world tobacco feel anxious, threatened, anxious, and the result is not comfortable in conducting business;
- Article 113 paragraph (2) of Law 36/2009 for the PT. Djarum will threaten, harmful and does not rule out going to impact on business continuity and PT.Djarum workers.

3. PT. Sampoerna H.M

- PT. HM Sampoerna does not fully support the provision of tobacco Law 36/2009 is inserted at the last moment the House of Representatives hearings Years 2004-2009, because the provision does not consider interests of all parties concerned. Therefore, PT. H.M. Sampoerna welcomed Parliament's decision to answer some shortcomings of the Health Act

enter Control Act Impact of Tobacco Products

in priority Prolegnas to trial in 2011;

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- PT. HM Sampoerna nor its parent company has been declared and communicate openly that tobacco products are addictive;
- After Section 113 the Act a quo was passed, the current Ministry Government Regulation of Health is working on that one its provisions would prohibit the tobacco industry in total to communicate its products to adult consumers. Whereas as a legal product, tobacco industry has the right to communicating to consumers through media channels and communication available;
- Article 113 of Law 36/2009 can be considered discriminatory because only mention tobacco as an addictive substance, which must be regulated by The Government.

4. PT. Gudang Garam

- PT. Gudang Garam employs 37,000 employees and any decision issued by the Government to consider the fate of the employee;
- If the tobacco industry banned advertising will lead to a status quo for brands that already exist in the sense would be very difficult create new brands appear if a large enterprise or small firms;

5. Joint United Cigarette Manufacturing Indonesia (GAPPRI)

- The fact of history, already 100 years old clove cigarettes produced. Kretek have strong influence on social security, political, and economic evenly;
- GAPPRI is the association that is responsible for viability of the overall economic development. Yet the material can not be denied there are many groups dominant both domestically and internationally are able to monopolize course of an authority. Dominant groups has

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a lot of wide access to resources and political economy often exclude the realization of the rule of law;

- GAPPRI fear of the three national pillars at stake: (1) Political sovereignty of law, where there are dominant groups, both domestic and international, were able to monopolize the road to power that can influence the regulation. (2) Independence economy, domestic industries that seek economic independence Cigarettes can be equated with the currently difficult to find. Even suppose that tax revenues can be set aside 10 and 15 years, debt state can be paid. (3) Clove is a form of the work of local wisdom entrepreneurs Indonesia that were colonized and oppressed, then able to continue the efforts of actors in the colonial economy earlier, then now would dicampakan granted, so make very uneasy;

Whereas in addition GAPPRI also filed written evidence in the form of Exhibit PT-1 to Exhibit PT-8 which is completely contained in

Sit the Case;

Court's opinion

[3.15] Considering that after hearing and reading the captions and Applicant conclusions, hear and read statements of the Government, explanation of the House, description of the Related Party, the description of the Related Party ad informandum, the statements of the witnesses offered by the applicant, a description Experts proposed by the Petitioner, the statements of the witnesses offered by the Government, and the statements of the Experts presented by the Government, as well as evidence Petitioner filed a written and the Related Party, as described in above, the Court argued as follows:

[3.15.1] Whereas the main problem that must be considered and decided by Court in this petition is the constitutionality of Article 113 paragraph (1), paragraph (2), and paragraph (3) of Law 36/2009 on the contrary argued Preamble, Article 27, Article 28A and Article 28I of the 1945 Constitution;

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[3.15.2] Whereas the description of the arguments of the petition, a description Government, the explanation of the House, and a description of the Related Parties as well as the facts law revealed in the trial, there are constitutional issues must be answered by the Court, which essentially, is whether Article 113 of Law 36/2009 which states that contain tobacco and tobacco products (Solid, liquid, and gas) were classified as an addictive substance is discriminatory and violated Petitioner's constitutional rights and violating the principle of certainty law, the principle of justice, and the principle of expediency, so contrary to constitution;

[3.15.3] Whereas the Petitioners' argument, the Court argued, against discrimination that is always associated with the treatment differently to things, does not mean that it necessarily different treatment would lead to discrimination law. One distinctions that give rise to legal discrimination, must be considered distinction regarding what and on what basis the distinction was made. The distinction that would lead to different legal status will surely followed by a legal relationship and legal effect different between the be distinguished. Of distinctions that arise in the relationship of law and legal consequences because of the legal status distinctions are drawn aspects discrimination laws of any such distinction, because thereof will be known differentiation of rights caused by discrimination. Therefore, the distinction that could result in discrimination law is the distinction which can lead to different rights between the parties are distinguished. Thus, the only distinction that gave birth to the rights and / or obligations a different course that could lead to discrimination law. Because rights advocates and / or liability is the subject of law, then only distinctions that give rise to different legal status of the subject the law alone can lead to discrimination law. Tobacco is not because tobacco is not the subject of legal rights holders, but only as objects of law in Article 113 of Act a quo by Applicant is distinguished by other products, because addictive substances mentioned as whereas goods and other products that also contain addictive substances are not

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mentioned in the article a quo. This is in line with the 1945 protect everyone from the discriminatory act, which is any person as

legal subject;

[3.15.4] Whereas tobacco is not the subject of legal rights but as objects the form of objects (*ius ad rem*). Law it has long held discrimination against the rights object. Differences between public and private bodies in a state administrative law is not based on the object shape but more to the designation. Land use public roads included in the understanding of the public body while the land used as a way in private residential environments including private objects can therefore be become the object of civil law in full. In fact, both the physical form is the same. Similarly, ships with a certain tonnage is included as immovable object against which a mortgage can be used as an object while boat or land vehicles such as trucks that are functions and technologies are not many different functions and aspects of ship technology, but including as distinct objects moving with the ship. Although his form as but the law also treated differently. For example, in the rules and traffic can be assigned to one particular way of public transport no entry, while private vehicles are not banned. Cars by brand and capacity The same distinguished by the law, namely that one as the car of public transport while the other as a private car. Thus, the distinction can lead to discrimination law is the distinction of subject law as a supporter of the rights and obligations, not the distinction of the object rights;

[3.15.5] Whereas the Office of the High Commissioner for Human Rights of the United Nations in General Comment (General Comment No. 18 of Nondiscrimination: 11/10/89) of the Covenant on Civil and Political Rights on the 1 stated, "Non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights ". Further stated, "Thus, article 2 paragraph 1 of the International Covenant on Civil and Political Rights 133

obligates each State party to respect and Ensure to all persons within its territory ... ". Thus, the prohibition of discrimination is directed against "persons" and relating to the protection of human rights. In some The International Convention is clear that discrimination is prohibited is discrimination to humans or persons as legal subjects and there was never any prohibition of discrimination against the rights object. UN General Declaration dated 20 November 1963 regarding the United Nations Declaration of All Forms of Racial Discrimination confirmed the prohibition of discrimination on grounds of race, sex, language, religion, color, race, and ethnicity. International Convention on the Elimination of All Forms of Racial Discrimination adopted by the UN dated December 21, 1965 mentions the prohibition of discrimination on the basis of race, color, race, and ethnicity. International Convention on the Suppression and Punishment of the Crime of Apartheid, adopted on 30 November 1973 prohibit social segregation and apartheid in sports practices;

[3.15.6] Whereas the international conventions it is clear that prohibition of discrimination was never intended to object to the right but recognized human rights as holders of legal subjects. In International Covenant on Economic, Social and Cultural Rights found there are ten basic discrimination of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status of all related

with the person as a subject of law and not related to the rights object. The difference in the enjoyment of the rights held by a person against a object specific rights compared with other objects have rights implications in economics. It thus can not be circumvented and does not violate prohibition of discrimination. Someone who has the status of land ownership will inevitably result in his or her right economically than they that for example only has the right to build, because the higher value economy that is the price of land is more expensive. Transport entrepreneurs common in certain majors or trajectory can be smaller revenue compared with other major public transport, but the difference income does not mean employers have discriminated between transportation. Government as regulator can conduct policies

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and even had to take certain policy if it is found there income differences are very noticeable let alone lead to the loss the transport entrepreneurs. Determination of rice as a staple food (nine basic needs) to make government needs to provide stock national rice sufficient, because if not, there will be a scarcity national rice. If there is a shortage of rice, you can bet the price of rice will up. Economically, the rise of rice will affect the increase income of rice farmers and the more rare will push prices higher higher rice. The increase in rice prices are very high it is not desired by the Government, therefore, to keep the national rice stock carried out on rice imports. With the inclusion of rice a staple food, farmers Rice would not be possible to enjoy an increase in income caused by increase in rice prices due to shortage of rice supply nationwide, because The Government always maintain adequate supply of rice as one basic food ingredients and make efforts so that cheap rice prices stable. The government's decision to establish rice as an ingredient distinguish basic food is rice with other food ingredients, which thus resulting in the determination of control rice prices in the market so as not to become too expensive. Directly, consequently rice farmers do not will never get a considerable economic benefit from the results rice because rice plants included in the category of basic food ingredients. Case Thus, it can not be used as the basis of that discrimination has occurred because Government set rice as a staple food. Similarly, the distinction between a motor vehicle that is differentiated between types of vehicles luxury and not a luxury vehicle as a tax base, it is not included as a discriminatory treatment as intended by Article 281 paragraph (2) UUD 1945 because that is indistinguishable objects rather than subjects of rights and the law. If the rights of non-discrimination as a human right applied to the object as an object of rights, it will damage the joints law because the law precisely discriminate on the basis of status objects despite its legal form from the same object;

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[3.15.7] Whereas the Petitioner further argues that it is unfair for Article 113 of Law 36/2009 a quo only lists tobacco as an addictive substance, while marijuana is not included as an addictive substance but obviously marijuana as a substance addictive. Against these arguments, the Court argues that the provision Section 113 of Act a quo that only mentions tobacco as a substance

addictive does not mean that other types of plants that are not mentioned in Article a quo, it necessarily does not include an addictive substance, if it is manifestly contain addictive substances. Article 113 of Law 36/2009 does not cover the Act to mention any other addictive substances other than tobacco. Long before the Law 36/2009 was enacted, in 1976, has enacted the Law No. 9 Year 1976 on Narcotics. In 1976 the Narcotics Act, is set between other:

- Article 2 states that the Minister of Health is authorized to determine: (i) drug abuse instruments, (ii) materials that can be used as an ingredient in the manufacture of narcotics as goods under supervision;
- Article 3 states that narcotics are used only for the purposes treatment and / or purpose of science and against narcotics prohibited certain very dangerous to use for the benefit treatment and / or scientific purposes;
- Article 4 states that for the benefit of the treatment and / or destination science to the institution of science and / or institutions education can be given permission by the Minister of Health for the purchase, plant, save for having or for supplies or control of Papaver plant, coca, and marijuana. Institutions that grow Papaver, coca, and marijuana shall make a report on the plant area, crop yields, and so on, which will be governed by Regulation The Government.

[3.15.8] Whereas although the Narcotics Act 1976 has not been used mention of the addictive substance, but in the section "Considering the letter b 'Act is stated, "that on the contrary, drugs can also cause
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dependence which is very harmful when used without restriction and careful supervision. " Thus the basic arrangement of narcotics with the basic regulation of tobacco in Law 36/2009 that is, "can cause an adverse dependency" which means as addictive substances. Under Article 1 number 1 letter a of the Narcotics Act, 1976, narcotics is the material referred to in Article 1 paragraph 2 to the number 13, and the number 12 is mentioned, "marijuana plants are all part of all Cannabis genus of plants, including seeds and fruits ". Thus, to cannabis plants have been carried out surveillance and even ban the planting long before Law 36/2009 was enacted, ie since 1976. Narcotics Law 1976 replaced by Act No. 22 of 1997 and the last replaced by Act No. 35 of 2009, which in Law This new legislation, supervision and prohibition of cannabis plants still remain in place. Thus it turns out that of the cannabis plant supervision has been arranged since 1976. Based on the description in above, then the mention of tobacco as an addictive substance in Article 113 of Law 36/2009 not only makes tobacco is included as an addictive substance in exclusive. Based on the above description, the provisions of Article 113 of Law 36/2009 does not violate the prohibition discriminatory as defined in Article 28I paragraph (2) of the 1945 Constitution;

[3.15.9] Whereas in the trial there are experts who claim that placement of tobacco regulation in Article 113 of Law 36/2009 a quo is not appropriate based on the theory of the formation of a good Law and the Law

36/2009 is less than perfect preparation because Article 113 of Law 36/2009 a quo seemed suddenly set, which is not systematically associated with Another matter which is governed by Law 36/2009, giving rise to uncertainty the law. Against this, the Court in several decisions have been declare that to the proposition that a norm is vague which can lead to multiple interpretations, not necessarily as a norm that is not disconnected ensure legal certainty as referred to by Article 28D of the 1945 Constitution, but the Court would claim, including the implementation of 137

norm so that not contrary to the principle of legal certainty defined by Section 28D of the 1945 Constitution. In other decisions, Court also stated that if a norm being applied to tested turned out to be interpreted differently and the differences in the interpretation lead to legal uncertainty that causes the violation of rights citizens of the state constitution, the Court gave the decision conditionally constitutional interpretation is to give a specific order not to cause uncertainty of law or violations of citizens' rights. In Article 113 a quo did not have to do with the subject matter of discrimination against law, including the applicant, but rather as an object associated with tobacco governed by the law as an addictive substance. Thus, it is granted or to refuse the petition for judicial review of Article 113 of Law a quo there is no legal subjects are benefited or harmed by constitutional. Guarantees and protections intended by Article 28D of the Constitution 1945 was a guarantee of recognition and legal protection to Petitioner, while Article 113 of Law 36/2009 a quo did not change recognition of the Applicant. And also a quo article is not relevant with the prohibition to grow tobacco. If now there is the suggestion to switch from tobacco plants, as occurs in the petition, Thus it is a policy that is not related to the provisions of Article 113 of Law 36/2009;

[3:15:10] Whereas Article 113 of Law 36/2009 formation of a quo intended to stated that tobacco is addictive substances included, and because it includes addictive substance, it will be the production, circulation, and its use, as then defined in Article 114, Article 115 and Article 116 Law 36/2009. If Article 113 of Act a quo is seen as less precise its placement in the Law 36/2009, and even if subsequently placed in another Act, such thing will not change the effect of the substance of Article 113. That is, the substance remains a valid although not included in Law 36/2009. Even Even if the phrase "substance 138

addictive "in Article 113 of Act eliminated, so it will not be change the fact that the actual tobacco does contain addictive substances;

[3:15:11] That the guarantee and protection of the law by Article 27 paragraph (2) in conjunction Article 28D Paragraph (2) of the 1945 Constitution was not intended that the state should income guarantees every citizen, which in this case, protecting the income earned from the selling price of tobacco plants. As previously described, that the farmers are very vulnerable to padilah low income because of higher rice prices are undesirable happening because the Government with all the authority must ensure that the price rice, which is part of the food, not too high. Provisions

contained in Article 27 paragraph (2) in conjunction with Article 28D paragraph (2) of the 1945 Constitution is including rights in economic, social, and cultural namely the generation The second of human rights. Of the right to work this needs be quoted what is delivered by Matthew Craven in "The International Convention On Economic, Social and Cultural Rights. A Perspective on its Development ", that, "... any States would not accept an obligation to" guarantee "the right to work in the sense of ensuring full employment or eliminating unemployment. In particular, it was feared That Such a guarantee would bind States to a centralized system of government and require labor That all be under the direct control of the State. "Thus, the notion that everyone has the right to work it is not intended that the state should provide employment for all its citizens, because if this is done, there will be centralization of government and that all citizens must be subject to government to work in the field provided by the Government, whereas every citizen has a constitutional right to choose employment he likes. Providing employment in accordance with the wishes of every citizen is something that can not be met by any government as well. Government obligations to the rights of economic, social, and cultural rights is to pursue opportunities as widely as possible by means bersungguhsungguh so that every citizen can enjoy those rights and instead countries should be able to provide employment for every citizen;

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[3.16] Considering whereas based on all the above considerations, petition is groundless law.

4. CONCLUSION

Based on the assessment of facts and laws as described in above, the Court concluded:

[4.1] The Court has authority to adjudicate the petition a quo;

[4.2] Petitioners have legal status (legal standing) to filed the petition a quo;

[4.3] Basic legal petition is groundless.

Under the Constitution of the Republic of Indonesia Year 1945 and Law Number 24 Year 2003 concerning Constitutional Court as amended by Law No. 8 Year 2011 concerning Amendment to Law Number 24 Year 2003 concerning the Constitutional Court (State Gazette of the Republic of Indonesia Year 2011 Number 70, Republic of Indonesia Number 5226), and the Law Law Number 48 Year 2009 regarding Judicial Power (State Gazette Republic of Indonesia Year 2009 Number 157, Supplement Republic of Indonesia Number 5076);

5. DECISION

Stating rejected the petition in its entirety.

Hence the decision was in the Consultative Meeting by Nine Constitutional Court Justices, namely Moh. Mahfud MD as Chairman and concurrent Member, Achmad Sodiki, Harjono, Sumadi Fadlil Ahmad, Anwar Usman, Hamdan Zoelva, Maria Farida Indrati, M. Akil Mochtar and Muhammad Alim, respectively as a Member, on Tuesday the eighteenth day of October of

two thousand eleven, and was pronounced in the Plenary Session of the Constitutional Court open to the public on Tuesday, one month of November of two

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thousand eleven by eight Constitutional Justices, namely Moh. Mahfud MD as Chairman concurrent Member, Achmad Sodiki, Maria Farida Indrati, M. Akil Mochtar, Harjono, Sumadi Fadlil Ahmad, Anwar Usman, and Hamdan Zoelva, each

as Members, assisted by Ida Ria Tambunan as

Substitute Registrar, and attended by the applicant, the Government or its representative, House of Representatives or its representative, and the Related Parties or the represent.

CHAIRMAN,

Signed

Moh. Mahfud MD

JUSTICES,

Signed

Achmad Sodiki

Signed

Harjono

Signed

Ahmad Fadlil Sumadi

Signed

Usman Anwar

Signed

Hamdan Zoelva

Signed

Maria Farida Indrati

Signed

M. Akil Mochtar

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6. DIFFERENT OPINIONS (dissenting opinion) AND REASON

DIFFERENT (concurring OPINION)

Against the decision of this case there are 2 (two) Constitutional Court Justices whose opinions differ (dissenting opinion), the Constitutional Justice M. Clever Mochtar and Judge of the Constitutional Hamdam Zoelva and 1 (one) of the Judges Constitution which has a different reason (concurring opinion) that Court Achmad Sodiki Constitution as follows:

[6.1] Different Opinions (Dissenting Opinion) Constitutional Justice M. Clever Mochtar

That article is included in Section 113 of Law 36/2009 which Seventeenth Security set about addictive substances. Seventeenth Section of Law 36/2009 consists of 4 (four) articles, namely Article 113 through Article 116. From the regulating the addictive substance, the word "tobacco", "products that containing tobacco, "and" cigarettes "can be found in Article 113 paragraph (2), Article 114 and Article 115. While other forms of addictive substances is not mentioned in Special Section Seventeenth Act a quo. According to the Dictionary of Language Indonesia, "addictive" means (1) is an addiction, or (2) is caused dependence on the wearer. Thus, including addictive substances not only consist of tobacco and tobacco-containing products as referred to in Article 113 paragraph (2) Health Act. There are a variety of types of substances that fall into the category of "addictive substances" such as Narcotics and

Psychotropic.

Therefore, there is inconsistency between the title part of the seventeenth Law a quo which aims to regulate the content of Security addictive substances (Content) articles contained in the Act a part of the seventeenth quo provide a larger portion of the set is specifically about smoking tobacco and other addictive substances without setting specifically. In addition, there is inconsistency of the provisions of Article 116 of the Health Act which states that the security of other addictive substances to be regulated further by Regulation The Government. In fact, the setting of other addictive substances, other than cigarettes and tobacco, have been 142

stipulated in the Act and not by government regulation, the substance addictive form of psychotropic substances regulated by Law No. 5 of 1997 on Psychotropic Substances and the form of addictive substances regulated by the Narcotics Act Law Number 35 Year 2009 on Narcotics.

Through semantic reasoning can be concluded that, in truth, Section Seventeenth Law 36/2009 are set specifically on the Security addictive substances in the form of cigarettes and tobacco. Every phrase "material contain addictive substances" in the article that is in the Seventeenth Section of Law 36/2009 likely to lead to cigarettes and products containing tobacco. In semantics, the preparation of the seventeenth has inconsistency because of the mention of the phrase "material containing addictive substances". Forming the Act has narrowed the meaning of the addictive substance that is only include tobacco and tobacco products, but this phrase contains broad sense that also includes other addictive substances, such as psychotropic and narcotics.

The settings are not konsistens in Law 36/2009 and read in semantic context certainly cause injustice and legal uncertainty so contrary to the constitution.

The public view of the different tobacco addictive substances other. In general, people are seeing Psychotropic and Narcotics as an agent addictive is illegal that should not be consumed except when used for the particular interests and by the authorities as to treatment by doctors. Another case with cigarettes or tobacco products that can be easily found or obtained freely. Cigarettes or other tobacco products is not illegal. Thus, the view the public about tobacco or cigarette deeply divided. Health factors become one of the reasons that led to differing views on the public about cigarettes and tobacco products. At least change the paradigm an emphasis on the factors in order to protect public health from illustrated the dangers of cigarettes and tobacco in society 143

represented internationally by the World Health Organization which issued framework convention on tobacco control (Framework Convention on Tobacco Control-FCTC) and is valid from February 27, 2005. FCTC declared as global trendsetters who change society's view the dangers of cigarettes and other tobacco products. Indonesia became the only countries in Southeast Asia that have not ratified this convention. In Law 36/2009 is very visible to the influence of the FCTC in control or regulation of cigarettes and product safety tobacco on the Health Act. Article 114 of Law 36/2009 which requires

inclusion of health warnings in line with article 11 of the FCTC Packaging and Labelling governing of Tobacco Products, and Section 115 Law 36/2009 which sets the region without cigarettes in line with article 8 Which sets the FCTC Protection from Exposure to Tobacco Smoke. Arrangement provisions in the seventeenth Health Act which regulates the securing the basis for addictive substances set out more about smoking and tobacco products regulated by Government Regulation. Regulation of cigarettes and tobacco products into things that are not easy because it involves industry cigarette which absorbs workforce in large numbers, from the start sector tobacco farming to production of cigarettes. In addition, for the people of Indonesia cigarettes to be part of the cultural heritage community, especially cigarette clove of some regions in Indonesia. So that government policy in set the arrangement on cigarettes and tobacco products should be able to protecting the constitutional rights of citizens between enjoying an environment that healthy and preserve the cultural heritage of society as well accommodate the interests of tobacco farmers and workers involved in tobacco industry and tobacco products.

Noting the provisions contained in the Seventh Section Twelve Law 36/2009 clearly visible the hidden interests that aims to plant termbakau which is the main raw material of the tobacco industry was the only containing addictive substances, namely trade business interests products of Nicotine Replacement Therapy (NRT) and without regard to 144

impacts that will occur to tobacco farmers who have economic rights social and cultural rights guaranteed by the 1945 Constitution; Restrictions on tobacco as an addictive substance has been no attention to the fact that there are approximately 6 million Indonesian people who live and perikehidupannya dependent on tobacco in all industries. Moreover, the tobacco industry is one of the largest contributors to the state budget funding.

Restrictions can be done provided the framework for ensuring recognition and respect for the rights and freedoms of others (vide Article 28J Paragraph (2) of the 1945 Constitution). Do not just for the sake of interest then ignoring the rights of Indonesian citizens, because if so then there has been denial of the values contained in the 1945 Constitution;

By considering the above description, in my opinion, should Court partially granted the petition, which states along the phrase "tobacco" and "products containing tobacco" on Article 113 paragraph (2) of Law 36/2009 on Health in conflict with the Constitution 1945 and has no binding legal force;

[6.2] Different Opinions (Dissenting Opinion) Constitutional Court Justices Hamdan Zoelva

Subject is requested by the Petitioners to the Supreme is the specific inclusion of tobacco and products containing tobacco within the framework of safeguarding the use of materials containing substances addictive so as not to disturb and endanger the health of individuals, family, community, and environment in Article 113 of Law 36/2009. Petitioners unrest and tobacco farmers for the provision should be understood by the Court why the only tobacco and tobacco products mentioned concretely as addictive drug disturb and endanger the health of individuals, families, communities

and the environment, and does not mention other addictive substances. It was
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cause a sense of injustice by the Applicant and tobacco farmers should be guaranteed by Article 28D paragraph (1) of the 1945 Constitution and a sense of concern will threaten the livelihoods of their hereditary grow tobacco to sustain life and living as guaranteed in Article 28A of the 1945 Constitution.

True, cigarettes damage the health of its users. But whether on its own tobacco and other products harmful to Individuals, families, communities and the environment is something that still need further research. Therefore, that should be controlled and tobacco products is restricted is the obvious harm to health Individuals, families, communities and the environment, and not the tobacco. Tobacco is already a part of the lives of the farmers who are down generations pocket of his life from the tobacco plant. When tobacco control, and restricted products will inevitably threaten sustainability of the economic life of tobacco farmers hurt constitution guarantees to every person to sustain life and life under Article 28A of the 1945 Constitution. That, also wounded sense of justice of the tobacco farmers who only mentions tobacco, and all tobacco products as addictive, without mention of the addictive substance sourced from other products according to various studies contained in many types of plants. With the controlling authority in article a quo, without limitation by law, will allow the government restrict tobacco cultivation, and production quantities of tobacco that can be certainly be detrimental to the farmers who depend economically on production of tobacco plants.

To restore a sense of injustice of tobacco farmers and ensure continuity in the economic life of society as tobacco farmers Court should grant the petition in part, namely by declaring Article 113 paragraph (2) of Law 36/2009 contradict 1945 Constitution and has no binding legal force. The lifting of the Article 113 paragraph (2) of the Act a quo is not by itself eliminate government authority to exercise control over tobacco and
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any of its products because its authority is still possible under Article 116 of Law 36/2009. With the granting of Article 113 paragraph (2) of the Act a quo, the Court gave justice to tobacco farmers, so which is controlled by the Government not only addictive substance of tobacco and any of its products, but also all addictive substances derived from ingredients other.

[6.3] Different Reasons (Opinion concurring) Constitutional Justice Achmad Sodiki

Issues raised by the petition is to test constitutionality of Article 113 paragraph (1), paragraph (2), and paragraph (3) of Law 36/2009. The reason is because:

- The first article states the tobacco plants as addictive substances, while other crops such as marijuana is not, even though cannabis well not have any impact on health. Tobacco-called substance addictive considered contrary to the principle of justice because only

include tobacco plants while other plants such as cannabis containing also addictive and banned substances are not included in Act No. 36 of 2009.

- Both the inclusion of tobacco as an addictive substance raises legal uncertainty and the feeling was suffered material loss when to plant tobacco. Thus Article 113 paragraph (1), paragraph (2) and subsection (3) of Law 36/2009 is contradictory to Article 27, Article 28A and Article 28I 1945 Constitution. Petitioner also reminded the Court Decision No. 6 PUU/VII/2009 about the test of Article 46 paragraph (3) letter c of all the phrase "the demonstrate the form of cigarettes "which has been rejected by the Court to is canceled.

- About the inclusion of tobacco as an addictive substance. Tobacco is an agricultural product in which the applicant the right fit interests in order to make ends meet as farmers. Right is protected interests (subjective Recht ist das rechtlich geschutztes interesse "). Even Van Appeldoorn thinks is right 147

governed by a power law (objective recht Het is een ordende Macht, het is een door recht subjective objective recht geordende Macht. Recht is Macht). Therefore, any disturbance of the right shape can mean disruption in the interests of legal subjects. If the interest was so strong role in the life of one owner the right, the right to change will have an effect also against people who have the right, which can be advantageous and can also be disadvantageous to the owner the right. If the interests of economic interests, then the treatment differ over economic interests can be detrimental to the concerned. Moreover, if the economic interest in the form interests concerning the livelihood of a person or people. Right The law relating to the object that is all that useful for the subjects of law and which may be subject (object) transportation the law. If the distinction simply want to distinguish between types of objects such as moving objects with no moving objects, property rights, right to right to build a business and would not harm anyone. But the a problem is often a change of status of property rights into rights directly controlled by the state or vice versa this involves interests who have the right. In this world there is almost no inch tanahpun that no owner or ruler, making it impossible separating an object / right with their owners or between subjects of law with his right. That only happens in the days of slavery when most human beings have rights that are considered not to be slaves. Slave equated with goods or animals since taken its workforce, which can dihaki and can be bought by the owner sold slaves. Only human rights have called someone (person or persoon). Now all mankind is the subject of law, therefore it is rights advocates, then separating and no link between the legal subject with the object of the law (right) is not appropriate, because the era of slavery has an end.

Classification of an object can result in losses if the object was previously not classified as a prohibited object to be 148

prohibited items, such as marijuana is not a good beginning prohibited but later included as prohibited goods distribute, consume and sell traded. So there's political criminalization of the thing, because for those who distribute, consume and sell traded subject to criminal threats. Impact, for the people who traditionally consume marijuana leaf becomes free to use it again.

In the world of commerce also occur such case, may occur a the original object can be entered freely into Indonesia into objects forbidden to enter. For example import beef that was not exposed to conditions kosher. Because the meat is halal classification held by meat that is not forced halal if imported beef must be certified kosher.

Thus not all beef can be imported into Indonesia, so it can be detrimental to the importer of beef, otherwise such a case benefit the consumer who wants halal beef.

Thus the difference in treatment based on the interests can directly cause harm but a community group can also be beneficial to other community groups. This is what cause can not be separated in the form of legal subjects person / legal entity with interests held by the legal subject them.

- Applicant questioned the classification of tobacco as an addictive substance with interests which are classified into / include addictive substance will adverse effect, whereas other substances that also contain addictive substances not included in article marijuana, namely Article 113 paragraph (1), paragraph (2) and subsection (3) of Law 36/2009. This section does not contain the intent that other substances by itself is not mentioned in the article a quo excluded as addictive substances such as marijuana and so forth. This article only states, substance include tobacco addictive and so is linked to paragraph (1) its security is required in its use which does not interfere and endanger the health of individuals, families, communities and

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the environment. There is a difference between tobacco and marijuana despite equation is as addictive substances. Tobacco and tobacco products are still be legally sold free and may be consumed in general (see Decision Number 54/PUU-VI/2008 Constitutional Court, as evidenced by imposition tobacco excise tax on cigarettes differences), although there are restrictions as intended by paragraph (1) and paragraph (3) article a quo. While marijuana obviously not a legal product for sale and consumption by society, it can not be equated his position among tobacco with marijuana. Here there is no question of legal certainty because petition does not include issues now being applied The test in the Constitutional Court Decision No. 54/PUU-VI/2008 even mention the issue of tobacco.

In the modern world with the advancement of science in health visible human effort to live a healthy life not only for yourself but also for others. Products consumed by humans as well increasingly diverse, so that control of the hazards posed by variety of substances that are contained by the food is not possible done alone by the individual. It is the duty of the state to

protect the health interests of the people. It is the belief modern world that smoking can be harmful because it kesehatan.Oleh increasing number of smokers also increases the potential losses will suffer both in the field of health, labor productivity, although the state get tax taken from products of cigarettes (tobacco). Awareness to avoid smoking more precisely from among a fairly educated than among less educated or not educated. However, limiting the spread of the dangers of smoking are not may only be hung on the consciousness of those who are educated, but States should take action in order that we anticipate will generations inherit a healthy diet. It is precisely the present policy pursued It would be unfair if it is not good for generations to come, because future generations can not participate to determine policies that are now taken by the state. Not able to be 150

morally responsible, future generations suffer because the current generation of policy mistakes. Moreover one should not benefit from his actions which manifestly dangerous other people. Tobacco as an addictive substance as well as a cigarette ingredient there is no denying the major cause of cancer diseases, attacks heart disease, impotence and disorders of pregnancy and the fetus as imprinted on every cigarette pack warning labels. Therefore it is proper petition has been rejected by the Court.

Registrar,

Signed

Ida Ria Tambunan