



Criminal Law Enforcement against Violations of Non-Smoking Areas Based on Law Number 17 of 2023 concerning Health

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ABSTRACT

Legal protection for consumers against the dangers of smoking in Indonesia is still very minimal, especially regarding law enforcement in smoking ban areas. This study aims to analyze legal protection for consumers against the dangers of smoking and evaluate the effectiveness of law enforcement against violations in smoking ban areas. This research uses normative research methods supported by empirical research. Data was collected through analysis of legislation and related literature, as well as observation of law enforcement practices in the field. The research found that legal protection of consumers is divided into two aspects, namely preventive and repressive. However, there are three factors inhibiting law enforcement in smoking ban areas, namely the lack of clear legal substance, low understanding among law enforcement, and lack of supporting infrastructure. The results of this study show that although there are regulations governing smoking restrictions, their implementation is still weak. Collaborative efforts between the government, communities, and businesses are needed to increase awareness and compliance with existing regulations.

Keywords: Non-Smoking Area, Consumer Legal Protection, Law Enforcement.

INTRODUCTION

Cigarettes are a significant commodity in the Republic of Indonesia, with a high number of consumers and smokers. The health impacts of smoking are severe. Cigarettes have become ingrained in daily life for many, leading to a pressing need for health regulations. The government has taken steps to address this issue, notably through Law Number 17 of 2023 concerning Health, which emphasizes the protection of public health from the dangers of addictive substances, including tobacco products (Fithria et al., 2021).

Furthermore, Government Regulation No. 109 of 2012 concerning Safeguarding Materials Containing Addictive Substances in the Form of Tobacco Products for Health provides a framework for regulating the sale and consumption of tobacco (Saitta et al., 2017). This regulation aims to create designated smoke-free areas and protect vulnerable groups, such as children and pregnant women, from exposure to tobacco smoke.

In Indonesia, the prevalence of smoking is very high, particularly among adolescents and adult males. Despite existing regulations regarding smoke-free areas, law enforcement against violations remains weak. Many public places that are supposed to be smoke-free become areas where smoking is allowed. This indicates that while regulations exist, implementation on the ground is ineffective (Freudenberg, 2014).

Previous studies have examined the effects of health policies related to tobacco control in Indonesia. For instance, Djutaharta et al. (2021) noted that although policies are in place, public compliance with smoke-free area regulations remains low (Djutaharta et al., 2021). Another study by Seear & Fraser (2014) showed that unclear regulations often hinder law enforcement.

The urgency of this research is heightened by the high smoking rates and the associated health impacts. Without a deep understanding of the effectiveness of existing regulations, efforts to protect the public from the dangers of smoking will continue to be hindered. This study aims to explore the factors affecting law enforcement in smoke-free areas in Indonesia.

The novelty of this research lies in its approach, which combines normative and empirical analysis to evaluate the effectiveness of law enforcement against violators of smoke-free areas. By understanding the factors influencing law enforcement, this study aims to contribute new insights to the literature on public health protection.

This research aims to examine the legal protections available for consumers concerning the dangers of smoking and the effectiveness of criminal law enforcement against violations of non-smoking areas as stipulated in health law.

RESEARCH METHODS

The research method used in this research is a normative research method supported by empirical research which uses various types of primary legal materials in the form of statutory regulations and secondary legal materials in the form of literature relating to legal protection for consumers regarding the dangers of cigarettes according to health law, which then connected to events that occur in the field as a source of research material. Johnny Ibrahim is of the opinion that normative legal research is a form of scientific research aimed at finding the truth based on the logic of legal science in terms of the normative part, or which takes the form of legal discovery efforts that are adapted to a particular case.

RESULTS AND DISCUSSION

Legal Protection for Consumers for the Dangers of Cigarettes According to Health Law

Article 1 paragraph (2) PP No. 109 of 2012 concerning Safeguarding of Materials Containing Addictive Substances in the Form of Tobacco Products for Health, determines that a Tobacco Product is a product which is wholly or partially made from tobacco leaves as the raw material which is processed for use by burning, smoking and inhaling or chewing (Sinuraya et al., 2024). Cigarettes are processed tobacco products that we often see in the community which are intended to be burned and smoked or inhaled, including clove cigarettes, white cigarettes, cigars or other forms produced from the plants *Nicotiana tabacum*, *Nicotiana rustica* and other species or synthetic ones whose smoke contains nicotine and tar

with or without additives (Kishore, 2014). The emergence of electronic cigarettes (Electronic Nicotine Delivery System or E-Cigarette) has resulted in an increase in the number of smokers in Indonesia. Electronic cigarettes are an innovation from conventional cigarettes to modern cigarettes which are used in the same way as smoking in general, namely by inhaling (Cunningham et al., 2020). The use of e-cigarettes requires a liquid called liquid. Some liquids in e-cigarettes are without nicotine and some contain nicotine with different levels of nicotine content in each product, starting from the lowest level to the highest level.

Addictive substances are regulated in Law Number 36 of 2009 as amended by Law No. 17 of 2023 concerning Health (hereinafter referred to as the Health Law) in Article 113 paragraph (2) which includes tobacco, products containing tobacco, both solid liquid and gas, which are addictive and whose use can cause harm to oneself and the surrounding community (Seear & Fraser, 2014). In the liquid content of e-cigarettes there is nicotine which is a substance or pyrrolidine compound found in *Nicotiana tabacum*, *Nicotiana rustica* and other species or synthetic substances which are addictive and can cause dependence, based on the provisions mentioned above, the addictive substance contained in the liquid content of e-cigarettes is an addictive substance as intended in PP No. 109 of 2012 which can cause addiction or dependence and endanger health and e-cigarettes can be classified as tobacco products because the way e-cigarettes work is by burning the liquid and then inhaling it like smoking in general (Farsalinos, 2021). If consumed continuously it will endanger health as is the case in conventional cigarettes.

In general, legal protection for consumers can be divided into 2 areas, namely preventive (prevention) and preventive (processing/settlement). In trading cigarettes to consumers, preventive legal safeguards can be carried out by introducing special regulations for cigarette products. An example of an applicable regulation is Republic of Indonesia Government Regulation Number 109 of 2012 concerning Health Protection for Substances Containing Narcotics in the Form of Tobacco Products (Prayitno & Miekhel, 2023). The PERDA explains the creation, distribution and special protection of children and pregnant women. This regulation also includes regulations regarding smoking-free areas.

By implementing this regulation, it is hoped that it will be effective in preventing cigarette trafficking and providing better protection for them (Geroy & Encarnacion, 2021). This preventive legal protection plays an important role in maintaining the welfare and safety of consumers, especially children. Through these preventive measures, it is hoped that we can reduce the accessibility of cigarettes for consumers, educate the public about the dangers of smoking at a young age, and promote awareness about the importance of maintaining the health and welfare of children. Thus, preventive legal protection is a crucial first step in efforts to create a healthy environment free from the bad effects of smoking for the younger generation.

Apart from that, additional preventive protection is provided by providing counseling to entrepreneurs, consumers (especially minors), and parents. Consumer advice can be given through education and understanding about the dangers of consuming cigarettes (tobacco products) for health, in accordance with Article 42 of Government Regulation No. 109 of 2012. This approach can be formal or informal.

According to article 4 of the Consumer Protection Law, consumer rights include the right to consumer advice and consumer training (Benöhr & Micklitz, 2018). This right aims to provide consumers with the opportunity to know the knowledge and dexterity needed to prevent harm through product use. Advice on diseases such as cancer, respiratory disorders, heart disease, digestive problems, negative effects on pregnancy, and emphysema, among others. In Indonesia, cigarettes are a product that is very easy to find, with various types and brands of cigarettes being sold in almost every shop, shop, supermarket and other shopping places. This easy availability contributes to the high number of smokers in Indonesia. It is

also appropriate to help companies, consumers, and parents understand the risks and negative impacts of smoking. Through this understanding, it is hoped that higher awareness can be created about self-protection and health and prevent cigarette consumption at inappropriate ages (Abugarara, 2020). This preventive approach is important in protecting young people and educating the public so they can make wiser decisions regarding the use of tobacco products.

Enforcement of Criminal Law against Non-Smoking Area Violations According to Health Law

The Denpasar City Government has issued an appeal regarding Denpasar City Regional Regulation No. 7 of 2013 concerning Non-Smoking Precautions to the public through circulars, outreach, internal communication between leaders and employees under them in each agency. This is done as a method of disseminating information to the public. At various meetings at the sub-district, sub-district and city levels, relevant officials always include information about smoking-free areas in every activity that involves many residents (Abugarara, 2020). The outreach was carried out as a follow-up to a circular regarding the appeal not to smoke in public places. The target of socialization is not only for active smokers but for the entire community, including active smokers as objects suffering from exposure to cigarette smoke. Internal communication between leaders and employees under them has also been carried out, even for the mayor's office itself, especially in the legal department. All staff in the work unit, including the leadership, is not allowed to smoke, if anyone is absent they will receive sanctions.

It turned out that the various forms of communication carried out were not optimal, as indicated by regulations related to technical instructions for the implementation of Denpasar City Regional Regulation No. 7 of 2013 has not been issued by the Denpasar City Government, so there is no designation of the area as a pilot project yet (Neely, 2022). In fact, determining a pilot project is very important because it will become a reference for other public facilities in preparing the facilities and infrastructure needed to support the implementation of KTR regulations. The public can also only hear appeals about the prohibition of smoking in public facilities without seeing directly what the smoking-free area itself looks like. As a result, only a small portion of the communication that was built was followed up because information about how to implement KTR was still limited to discourse.

The implementation of a rule is largely determined by the presence of human resources, both in terms of quality and quantity. The process of drafting regional regulations regarding KTR has involved all related agencies, including the Legal Department, Health Service, Education Service, Transportation Service, Women's Empowerment and Child Protection Service, Civil Service Police Unit, Hospitals, and all related agencies. In Denpasar City, the relevant agencies have not yet played a fully active role in realizing KTR. The Legal Department, Civil Service Police Unit, Health Service are services that have special units to oversee the implementation of Denpasar City Regional Regulation No. 7 of 2013 concerning Non-Smoking Areas. But it is still not optimal because it is hampered by technical instructions which have not been issued by the city government due to various certain considerations. Meanwhile, other agencies have not shown concrete steps as a form of support for Denpasar City Regional Regulation No. 7 of 2013.

Apart from human resources (HR), the availability of facilities and infrastructure is also very necessary to support the realization of KTR. Various promotional media as a means of information in the form of billboards, banners, billboards, stickers or other media are not yet visible in strategic places. This is because the costs that will be used to finance all KTR promotions have not been specifically budgeted for by the city government (Robinson et al., 2021). The targets for implementing KTR are government employees and the community in general. The facilities and infrastructure prepared by the Denpasar city government are limited to determining cigarette corners on certain lines where only a few agencies provide them, in fact there are no signs indicating that these corners are usually used by active smokers.

Most of the employees in this line have not complied with the rules that have been implemented, so there are still employees who smoke in places designated as cigarette corners.

The Denpasar city government has not allocated funds to support the implementation of Denpasar City Regional Regulation No. 7 of 2013 for each year (Rahayu et al., 2018). The availability of funds greatly influences the implementation of a rule, if the budget is inadequate then the rule will not run effectively. Existing funds are used to create various work programs aimed at the community by determining the main problems, areas for pilot projects, as well as for socialization purposes and their attributes. Funding constraints have resulted in the public not receiving sufficient information regarding Denpasar City Regional Regulation No. 7 of 2013. In terms of supervision, it is generally carried out by the Satpol-PP service, whereas in other agencies there is no supervisory unit specifically appointed to monitor the implementation of Denpasar City Regional Regulation No. 7 of 2013. The supervision carried out is only directional but not yet at the review stage to see to what extent the community complies with the Regional Regulations regarding KTR. The pros and cons in society have not been used as evaluation material to see the causes of the not yet optimal implementation of these regulations.

Recommendations to Improve Law Enforcement

1. **Preparation of Technical Guidelines:** The local government needs to immediately draft technical guidelines for the implementation of Regional Regulation No. 7/2013. These guidelines will provide clear guidance for all parties involved in law enforcement in smoke-free areas.
2. **Training for Law Enforcement:** Organize training for law enforcement and related officers on law enforcement procedures against non-smoking area violators. This will ensure a better understanding of the law and how it is implemented.
3. **Facility and Infrastructure Improvements:** Improve facilities and infrastructure, such as the provision of clearly defined smoking areas and the placement of no-smoking signs in strategic places to educate the public.
4. **Dedicated Funding:** Allocate a special budget for socialization and law enforcement programs related to smoke-free areas. This is important to ensure that all measures can be effectively implemented.
5. **Public Education Campaign:** Conduct an extensive education campaign to raise public awareness about the dangers of smoking and the importance of complying with smoke-free zone regulations.

CONCLUSION

This study shows that legal protection for consumers against the dangers of smoking can be done through preventive and repressive approaches. However, the fact that this protection is still very minimal indicates weaknesses in the implementation of regulations. The main implication of the results of this study is the need to increase awareness and understanding among businesses and the public about consumer rights related to safety and clear information. This is important to ensure that consumers are not only legally protected, but also adequately educated on the health risks of smoking and other tobacco products. In addition, law enforcement against smoke-free area violations should be strengthened. Limitations in the implementation of current laws indicate the need for evaluation and development of more effective and responsive policies. With better support from the government and active participation from the community, a healthier and safer environment from the dangers of smoking is expected. Thus, this study emphasizes the importance of collaboration between the government, businesses, and communities to implement existing regulations more effectively to protect consumer rights and improve overall public health.

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