
Legal Protection of The Fulfillment of The Right To Public Health Through The Establishment of Regional Regulations For Smoke-Free Areas

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KEYWORDS

fulfillment of
health rights, ktr
regional regulation

ABSTRACT

Based on the results of research in Majalengka Regency, it is very clear that the community wants a clean and healthy environment without exposure to cigarette smoke. Therefore, the Regional Government of Majalengka Regency needs to do to create a healthy and clean environment, so this needs to be a step to secure cigarettes for the health of both active and passive smokers through the establishment of a Smoke-Free Zone (KTR). Based on the above background, the purpose of this writing is as follows: a) To be able to find out what is the cause of the lack of a Regional Regulation on Non-Smoking Areas (KTR) in Majalengka Regency. b) To be able to find out what are the implications of the establishment of the Regional Regulation of Non-Smoking Areas (KTR) on the protection of the right to health in Majalengka Regency. The research method used is sociological juridical, which is legal research by looking at law as human behavior in society and then studied and reviewed based on relevant laws and regulations as a reference to solve problems. From a health perspective, cigarettes are the cause of death and pain that cause human misery and a decrease in quality of life and are contrary to Indonesia's human development. From a social and economic point of view, bad behavior of cigarette consumption violates human rights and is a means of impoverishing people. Based on the legal aspect, cigarettes are addictive substances which need to be regulated for the security of both production, distribution and use.

INTRODUCTION

The right to breathe clean air without exposure to cigarette smoke has become a global concern. The World Health Organization (WHO) predicts that diseases related to cigarettes will become a health problem in the world (Gadjong, 2017). Of every 10 adults who died, 1 of them died due to cigarette smoke. Meanwhile, the number of world losses due to cigarettes every year reaches US\$ 200 million, and the death rate from diseases caused by smoking continues to increase. Indonesia is one of the countries with the largest number of smokers in the world in 2007 is ranked 5th after China, United States, Russia and Japan, then in 2008 it rose to 3rd place after China and India (World Health Organization, 2019). The results of the 2017 Basic Health Research (Riskesdas) stated that the population over 10 years old who smoke is 29.2% and increased by 34.7% in 2018 for the age group over 15 years. The increase in the prevalence of smokers also occurred in the age group of 15-24 years, from 17.3% (2017) to 18.6% (2018) or an increase of almost 10% within 3 years. An increase also occurred in the productive age group, namely 25-34 years from 29.0% (2017) to 31.1% (2018).

"Smoking Can Cause Cancer, Heart Attack, Impotence, Pregnancy and Fetal Disorders", is the message on every cigarette pack, but many people ignore the message (Prasetyo, 2022). Cigarettes contain 4000 harmful chemicals, in addition to disturbing the health of the person who uses them, adults who are not smokers who are constantly exposed will also experience an increased risk of developing diseases caused by cigarette smoke, such as lung cancer, chronic bronchitis, coronary heart disease, increased blood cholesterol, impotence, miscarriage, stillbirth and other diseases. Here are some facts caused by cigarettes: (Manan, 2021)

- Indonesia is ranked 3rd in cigarette consumption after China and India;
- People who start smoking in their teens tend to die 20-25 years earlier than those who don't smoke;
- the dangers of smoking not only to lung cancer and heart disease, but also to health and death;
- Side effects : from head to toe.

Smoking, which seems to have become the culture of this nation, now belongs to all groups, both parents and children, both men and women, both rich and poor, both bosses and coolies (Dedi, 2018). The impact of cigarettes is very harmful to health, so to protect everyone from exposure to cigarette smoke, Law Number 36 of 2009 concerning Health (hereinafter written as Law 36/2009), regulates areas that should be prohibited from smoking, or called Non-Smoking Areas (hereinafter abbreviated as KTR) (Soekanto, 2016).

Further arrangements related to KTR are regulated through the Joint Regulation of the Minister of Health and the Minister of Home Affairs Number 188/MENKES/PB/I/2011 and Number 7 of 2011 concerning Guidelines for the Implementation of Non-Smoking Areas (hereinafter written PBM 188/2011 and 7/2011). Article 1 point 1 of PBM 188/2011 and 7/2011 states that the definition of KTR is: (Basah, 2022)

"A Non-Smoking Area is a room or area that is declared prohibited for smoking activities or activities producing, selling, advertising and/or producing tobacco products".

Furthermore, Article 3 states that KTR includes:

- a. Health service facilities;
- b. place of teaching and learning process;
- c. a place where children play;
- d. places of worship;
- e. public transportation;
- f. workplace;
- g. public places and other designated places.

Environmental control is also supported by the Joint Regulation of the Minister of Home Affairs and the Minister of Health No.34 of 2005, No.1138/Menkes/PB/VIII/2005 concerning the Implementation of Healthy Districts/Cities. Specifically, the Joint Regulation of the Minister of Health Number 188/MENKES/PB/I/2011 and the Minister of Home Affairs Number 7 of 2011 concerning Guidelines for the Implementation of Smoke-Free Areas mandates one of the efforts to implement the implementation of healthy districts/cities through the implementation of Smoke-Free Areas (KTR) (Tarmidji, 2022).

The Regional Government should immediately intervene so that its citizens do not become victims of the dangers of smoking, by making regulations as a realization of Law 36/2009 Article 115 paragraph 2 which states that "Regional Governments are obliged to establish smoke-free areas in their areas". It is hoped that the KTR regulation can protect the rights of all people from losses due to smoking, as stated in Article 4 of Law 36/2009 concerning Health, namely "everyone has the right to health" (Hasan, 2015).

Based on the above background, the following problems are formulated: a). What are the factors that cause the lack of a Regional Regulation on Non-Smoking Areas (KTR)? and b).

How is the legal protection of public health rights through the establishment of Regional Regulations on Non-Smoking Areas (KTR)?

RESEARCH METHOD

The research method used is a sociological juridical method, which is legal research by looking at law as human behavior in society and then studied and examined based on relevant laws and regulations as a reference to solve problems. The specification of this research is descriptive research, which is to analyze and present facts systematically so that it can be easier to understand and conclude. With this intention, the author will describe and report in detail, systematically and thoroughly on everything related to the urgency of regulating the No Smoking Area through Regional Regulations reviewed from the fulfillment of the right to health for the people in the Region.

RESULTS AND DISCUSSION

The Factors Causing the Lack of Establishment of Regional Regulations for Non-Smoking Areas (KTR).

The efforts of the regional government to date are still continuing to explore the formation of Regional Regulations (Perda) for Non-Smoking Areas ([KTR](#)) and Restricted Smoking Areas (KTM). So that later in the draft of regional regulations that contain rules on smoking prohibition, including provisions regarding smoking prohibition places and supervisors or enforcers of rules on smoking prohibition can run effectively and not harm local governments, especially against the reduction of local original revenue from cigarette advertising billboard taxes (Widjaja, 2017).

In addition to this from experience in several regions, that making a regional regulation is not easy, as long as it is made but left unattended. Does this regional regulation only meet the requirements? Some legislators still question the Regional Regulation, as for the reason that many regions already have Regional Regulations for Smoke-Free Areas, but in practice the Regional Regulation does not run as it should. So far, the implementation of the Smoke-Free Zone Regulation has been less effective and the enforcement of the rules has not been optimal. Sanctions for smokers who violate the regulations are only verbal reprimands, appeals, directions and fostering (Said, 2015).

The existence of a smoke-free zone can be a control for cigarette consumption. Many health articles review the adverse effects of cigarette smoke on health. Not only for active smokers, the people around them who are then referred to as passive smokers will also be affected, therefore, according to him, there must be regulations on smoke-free areas so that the quality of public health can be guaranteed. The community needs to be protected from the dangers of cigarette smoke (Kusumaatmadja, 2022).

The control of cigarette consumption must be more optimal. In addition to having an impact on health, tobacco consumption control is also a mandate of Law Number 36 of 2009. In article 115 paragraph (2), it is stated that local governments are required to establish smoke-free areas to protect their citizens from exposure to cigarette smoke. This is also a mandate of the Law which states that local governments must establish smoke-free areas in their respective regions.

The health status of the public is greatly influenced by the social determinants of health, which includes the conditions under which humans are born, grow, live, work, and grow old. Poor social determinants of health can cause various things, including an increase in health problems so that it forms people who are susceptible to diseases that cause a decrease in human productivity and quality of life, which ultimately increases the rate of illness and death. For this reason, it is necessary to have a system to handle health problems to be able to increase the

participation of various sectors, both in the health sector and outside health (Rasjidi et al., 2023).

This is because the determinants of health status are mostly in other sectors outside of health. Social and physical environmental factors as well as public health behavior are one of the important parts in social determinants of health. One of the physical environments that need to be considered is air.

The implementation of the No Smoking Area (KTR) is one of the efforts that can be taken to protect the public from exposure to cigarette smoke and tobacco products in general. This is also supported by Law 36/2009 and Government Regulation Number 109 of 2012 (PP 109/2012) which requires local governments (local governments) to prepare Regional Regulations on Non-Smoking Areas (Perda KTR). Therefore, it is necessary to establish a regional policy that provides protection against the dangers of smoking for infants, toddlers, and non-smokers in the form of controlling smoking behavior.

Regencies/Cities have the potential to benefit from the implementation of smoke-free zones in their areas, either directly as a result of reducing negative impacts on health or indirectly. Based on the analysis of PIS-PK (Healthy Indonesia Program with a family approach).

The high report of exposure to cigarette smoke in the house may be closely related to the achievement of Clean and Healthy Living Behavior in Regency/City areas. Respondents who smoke consume an average of 8.5 cigarettes per day. At least 20% of all outpatient visits at health centers in the region are cases of respiratory tract infections and hypertension, which can be related to cigarettes (Data from the Regency/City Health Office (Nampewo et al., 2022).

Support for the determination of KTR was also expressed by representatives of regional apparatus, medical professional organizations, and community organizations who attended the focus group discussion with the academic manuscript preparation team. Efforts to make certain areas as KTR have also begun in various agencies. For example, the education office expressed a strong commitment to make the education area a KTR accompanied by support from education implementers in the field.

The KTR Regional Regulation can regulate the existence of the regional regulation enforcement team and regulate a sustainable enforcement system. The scope and period of KTR regulation in the regional regulation is also a matter of debate. In this case, the concern is whether or not it is necessary to provide a special smoking place in the KTR and, if not, whether the provision can be implemented in a short time. Although most informants have given strong support for the elimination of special smoking areas in the KTR, there are concerns that there will be difficulties in enforcing the rules if the implementation of the KTR is carried out thoroughly and in a short time (Monteiro, 2017).

To avoid rejection, the KTR arrangement is expected to take into account the culture of the local community, most of whom are smokers, and for that it is expected to be preceded by sufficient socialization time to increase public literacy and public understanding of the dangers of cigarettes. As a middle ground, a special smoking area can be provided in the KTR, in the form of a place in an open space and does not show special treatment for smokers (e.g., not in the form of a gazebo), whose existence will be gradually eliminated (Goldsteen et al., 2024).

Another proposed effort to support the enforcement of KTR rules is a proactive effort to help smokers quit smoking. Although the health office has now started smoking cessation clinics, these efforts can be expanded by, for example, utilizing funds from cigarette taxes and/or excise.

Implications of the Establishment of Regional Regulations on Non-Smoking Areas (KTR) on the Protection of the Right to Health

Law Number 12 of 2012 concerning the Establishment of Laws and Regulations states that district regional regulations are laws and regulations formed by the Regency Regional

People's Representative Council with the joint approval of the Regent. Article 14 states that the content material of the district regional regulations contains content material in the context of the implementation of regional autonomy and assistance tasks as well as accommodating special regional conditions and/or further elaboration of higher laws and regulations.

Based on the results of the study of existing laws and regulations, the KTR Regional Regulation is a legal order and is a regulation that must be further elaborated in the regions. However, in general, health is a decentralized field and is the right and obligation of local governments in the implementation of regional autonomy.

Individual Health Services (PKP) describes how genetics, phenotypes, knowledge, lifestyles, family backgrounds, health monitoring, health medical records, and health care groups supported by families, communities, and populations (including the environment and public policy) as a whole are able to improve a person's health status. The health of these individuals cumulatively becomes the health of the family and the community. Thus, to improve the degree of health, individuals need to be formed to be healthy and the environment needs to be formed to make the individual healthy, which ultimately builds a healthy family and society.

The 1945 Constitution also explicitly states that the state is responsible for the provision of proper health care facilities and public service facilities (Constitution 45; Article 34). With the decentralization of mandatory affairs where health is one of them, the government's responsibility for the health sector is the responsibility of local governments. Furthermore, Law 23/2014 states that health is a mandatory matter of local governments.

Mandatory affairs are government affairs related to the basic rights and services of citizens whose implementation is required by laws and regulations to the regions for the protection of constitutional rights, national interests, public welfare, as well as peace and public order in the framework of maintaining the integrity of the Unitary State of the Republic of Indonesia as well as the fulfillment of national commitments related to international agreements and conventions. Article 18 of the 45th Chapter VI of the Constitution states that "provincial, regency, and city governments regulate and manage their own government affairs according to the principle of autonomy and assistance duties".

Local governments exercise the widest possible autonomy, except for government affairs that are determined by law as central government affairs. Local governments have the right to establish regional regulations and other regulations to carry out autonomy and assistance duties. However, this authority and affairs must be carried out in a concurrent, harmonious and harmonious manner between the center, provinces and districts/cities. Articles 49 and 50 of Law 36/2009 state that the government, local governments and communities are responsible for the implementation of health efforts as well as improving and developing health efforts. Health efforts as intended at least meet the basic health needs of the community and are based on assessment and research.

Existing laws and regulations have shown the need to form regional regulations at the Provincial/Regency/City level, including Majalengka Regency. The content of the material in the Regional Regulation to be built is the elaboration of the above regulations and laws strengthened by Law 23/2014 concerning Regional Government. Thus, there is no conflict between the Regional Regulation that will be built and the Laws and Regulations.

A state of health, both physically, mentally and socially, is everyone's desire. Even the health law adds a spiritual aspect to the definition of healthy it uses. In the context of the Unitary State of the Republic of Indonesia, health is one of the elements of welfare that must be realized according to the ideals of the Indonesia nation as stated in Pancasila and the 1945 Constitution.

Health development is directed mainly at preventing pain and how to improve the health of individuals and groups. This healthy paradigm is the nation's way of thinking because it is

more efficient and more reasonable. However, this paradigm also does not abandon curative, but nevertheless the approach is comprehensive.

As stated in the 1945 Constitution, decentralization is carried out by granting the widest possible autonomy to regions to take care of their own government affairs according to the principle of autonomy and assistance duties. This strategy is intended to accelerate the realization of community welfare through improving services, empowerment and community participation.

Air pollution, one of which is caused by cigarette smoke, becomes a serious problem when it is understood that cigarettes not only have a bad impact on the smoker's health, but also contaminate the people around him. The results of various studies on the dangers posed by cigarette smoke to health have been widely exposed but so far there has not been much response from the public. The government itself is faced with a dilemma to be firm regarding the prevention of the impact of cigarettes.

Banning people from smoking will deal with individual human rights and also indirectly kill cigarette companies that have contributed both as a source of state revenue and in job creation. Therefore, the role of the government in efforts to ban the use of cigarettes until now is very small and is only limited to disseminating information about the dangers of cigarettes to health and appeals not to smoke.

The draft regulation was drafted to bridge this condition, minimize the impact caused by cigarette smoke by not providing an absolute prohibition, but limiting the (bad) influence of cigarette smoke and the promotion/advertising (bad) of smoking by cigarette manufacturers. So, it is hoped that with the passage of time, the local regulations that will be enacted can provide a learning process for the community and foster awareness about the impact of cigarettes and the importance of health for the development of families, nations and states.

The KTR arrangement is based on the main foundation of a just and civilized humanity. The use of cigarettes is increasingly felt to be dangerous when the facts show that cigarettes are actually culturally and become a "staple" need for the poor and children. The uncontrolled need to smoke among these people is often a trigger for domestic violence or crime. To be able to fulfill their desire to smoke, they do not hesitate to commit crimes or violence that target not only other people but also their family members. The existence of cigarettes will ultimately be understood more from its negative side than its benefits after cigarettes are also used as an initiation for the use of illegal drugs and other addictive substances.

Controlling smoking activities will not be effective without being accompanied by norms that will burden sanctions for behavior that is seen as deviant. Therefore, based on the provisions in Law 12/2011 concerning the formation of Laws and Regulations, the relevant type of legal product is regional regulations. One of the reasons for the formation of the Regional Regulation is to implement legal orders. PP 109/2012 article 52 states that Regional Governments are obliged to establish Non-Smoking Areas in their areas with Regional Regulations.

Thus, the Regional Government is obliged to carry out the order for the sake of compliance with the law and in line with the current and future needs of the community. Apart from the sanction aspect, the pouring of smoking control policies into regional regulations is also based on consideration of the effectiveness of its implementation sociologically considering that the formation of regional regulations is carried out by involving the DPRD as a forum that represents the interests of the people in the region.

Controlling smoking activities is expected to be effective if there is awareness, willingness and ability of the community to understand the dangers posed by cigarette smoke, especially in the framework of the sustainability of the future of the nation's next generation who are healthy and intelligent. There needs to be wisdom and "relief" from various parties when in order to carry out its obligation to protect most citizens from the dangers posed by

cigarette smoke, the government must form a policy that seems to override the right of some other citizens to enjoy cigarettes.

Therefore, in order for the policies that are formed related to cigarettes to later be transformed into integrative laws that can minimize conflicts and maintain social harmony, it is necessary to involve all components of society from the planning stage to the determination and implementation. The formulation of the KTR Regional Regulation policy has gone a long way and involves all stakeholders, including the community.

The target of the KTR regulation is every resident and immigrant in the Bandung Regency area without exception. Regulation of the demand side alone (smoking activities) cannot succeed without controlling the supply side (production, distribution, marketing). Comprehensive regulations cover smoking behavior that does not interfere with and harm others, as well as control the production, distribution, sale, and marketing of tobacco products.

The arrangement includes various government-owned, private and community-owned institutions, public places, and also residences. Thus, the existence of the KTR Regional Regulation is directed first of all as a means of social control, namely controlling the community so that tolerance and mutual recognition and respect for their rights whose implementation often causes conflicts; However, this Regional Regulation is also intended as a means of social reform that can mobilize public awareness in understanding their human rights correctly and completely. Rights must always be understood correctly and completely, that is, in addition to giving rights to themselves, they also provide an obligation to recognize and respect the rights of others.

CONCLUSION

From a health perspective, cigarettes are the cause of death and pain that cause human misery and a decrease in quality of life and are contrary to Indonesia's human development. From a social and economic point of view, bad behavior of cigarette consumption violates human rights and is a means of impoverishing people. Based on the legal aspect, cigarettes are addictive substances which need to be regulated for the security of both production, distribution and use. For this reason, a draft regulation on Smoke-Free Areas has been formed which intends to regulate, secure and control these addictive substances.

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