



## Regulation of Cigarette Use According to International Law and Indonesian National Law

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**Abstract:** Health is a human right that must be protected by the state. The right to live healthy is a basic right that must be guaranteed because health is part of the primary needs of every human being. Smoking is very dangerous for health. The use of cigarettes has an impact on the health of other people around the smoker. This action violates a person's right to a healthy environment as guaranteed by the constitution. This research uses normative juridical research methods. The results found in this study are: (1) Regulation of the use of cigarettes according to international law is contained in the FCTC. (2) The Indonesian government has established a Draft Law on Tobacco and Government Regulations as a response to regulation of the use of cigarettes internationally (3) Regulations in Indonesia regarding tobacco control are currently in the form of Government Regulations, including Government Regulation No. 19 of 2003 concerning Tobacco Control.

**Keywords:** Cigarettes, Framework Convention on Tobacco Control, Health .

### INTRODUCTION

Smoking is a global problem. According to data obtained from the *World Health Organization* (WHO) report in 2002, smoking killed 4,830,000 people, 50% of which came from developing countries. In addition, it is likely that the number of deaths will double in the next two decades if no precautions are taken. Furthermore, it is predicted that more than 70% of these deaths will be in developing countries.

According to data from Basic Health Research (Rikesdas) in 2007 and 2013, there has been an increase in smokers in Indonesia. In 2007, the number of non-smokers was 67.8% and in 2013 it decreased to 66.6%. While the number of former smokers was 3%, in 2013 it increased to 4%. For smokers, in 2007 it was 5.5%, in 2013 it was 5%, and the number of smokers every day increased from 23.7% to 24.3%.

Increased consumption of cigarettes has an impact on the higher burden of disease caused by smoking and increased mortality due to smoking. In 2030 it is estimated that the death rate of world smokers will reach 10 million people, and 70% of them will come from

developing countries. If this trend continues, around 650 million people will be killed by smoking, half of which are of productive age and will lose 20 to 25 years of *life*.

When viewed from the content in it, cigarettes contain 4000 harmful chemicals. In addition, 60 of them are carcinogenic, so smoking is a strong risk factor for lung cancer, chronic bronchitis, and cardiovascular disease. Cigarette smoke contains an array of dangerous gaseous compounds and particles, such as carbon dioxide, water, carbon monoxide, tar, nicotine, nitrogen oxides, hydrogen cyanide, ammonia, formaldehyde, phenol and dozens of other toxic compounds. Some of these components are present in very high concentrations, for example carbon monoxide. The concentration of carbon monoxide in cigarettes is higher than *auto exhaust* from vehicles. The concentration of carbon monoxide will be lethal if inhaled continuously for 30 minutes.

Given the many dangers of smoking, it is necessary to regulate the use of cigarettes, both at the national and international levels. In Indonesia, the Government issued several regulations in the form of Government Regulations. Based on Government Regulation Number 109 of 2012 concerning the Protection of Materials Containing Additives in the form of Tobacco Products for Health, cigarettes are one of the tobacco products intended to be burned and smoked and/or the smoke inhaled, including clove cigarettes, white cigarettes, cigars or other synthetic forms. whose smoke contains nicotine and tar, with or with many additives. Cigarettes are usually cylindrical in shape of paper measuring 70 to 120 mm (varies) with a diameter of about 10 mm containing chopped tobacco leaves. This certainly has an impact on the health of other people, because cigarette smoke will affect other people in the environment around a smoker and violates a person's right to a healthy environment.

A person's right to a healthy environment is guaranteed by the constitution as stated in the Second Amendment to the 1945 Constitution of the Republic of Indonesia, article 28 H paragraph (1): "Every person has the right to live in physical and spiritual prosperity, to have a place to live, and to have good and healthy life and has the right to obtain health services. Chapter III Article 6, and the obligation to respect the rights of others in an effort to obtain a healthy environment, both physically, biologically and socially as stated in Article 10.

The FCTC text, which is the first global agreement on public health, was agreed upon by 192 WHO member countries at the World Health Assembly in May 2003. The deadline for signing the FCTC is June 29, 2004. The next stage is the ratification process in which the government and the House of Representatives agree to follow up on related agreements in accordance with the applicable constitution. The government is obliged to submit instruments of ratification to the Secretary General of the United Nations. Within one year after the agreement was promulgated, a conference of ratifying member countries was held with the aim of monitoring and evaluating the implementation of the agreement in each country.

A further ninety days after a minimum of 40 countries ratify it, the FCTC will become international law. Currently, 168 countries have signed the FCTC and 57 of them have ratified it. The Indonesian government, represented by the Ministry of Health, Ministry of Foreign Affairs, Ministry of Industry and Trade, Ministry of Finance, participated fully in all FCTC negotiations and became a member of the *drafting committee*. However, the fact is that Indonesia is the only country in Asia that did not sign the FCTC until the closing date at the end of June 2004.

After the existence of the FCTC in 2004, the Indonesian government's response was to form a Tobacco Control Bill in 2008. This was followed by the issuance of several regulations related to the use of cigarettes. Even though the government has not ratified the FCTC, the government has made regulations in the form of government regulations whose contents are very similar to the FCTC. As a result of these regulations, it is expected that there will be a decrease in smokers.

The government has established a national policy in the form of RI Government Regulation No. 109 of 2012 concerning the Use of Materials Containing Additives in

Tobacco Products for Health. The policy seems meaningless because socialization of the Government Regulation is still lacking. Since 2008 a Draft Law on Tobacco Impact Control has also been drawn up.

In general, health problems are still considered not as important as other problems, such as social and economic problems, whose impacts are immediately visible. The government's courage to decide on a tax increase on cigarettes, as of January 2008, is a step forward. Even though there are many challenges from other parties, education should continue to be carried out both for the community and other stakeholders regarding the positive impact of this policy. As is well known, the number of smokers in Indonesia is still very large, and this does not only affect themselves, but also other people and the environment. Appropriate regulation can be the basis for prosecution of smokers. Until now Indonesia has not ratified the international convention on tobacco control and until now regulations regarding smoking have not been enacted. Based on the description above, the authors are interested in conducting research on the topic "Regulation of Cigarette Use According to International Law and Indonesian National Law "

## **LITERATURE REVIEWS**

### **History of Tobacco**

The origins of the history of tobacco begin in Central America in BC. This can be seen from the carvings left by Native Americans in the form of religious leaders smoking as part of religious rituals. The history of the tobacco plant was written on October 12, 1492, when Christopher Columbus landed in America. Originally tobacco was a plant that developed in subtropical areas. Through engineering cultivation techniques, currently the tobacco planting area has spread and developed in areas with southern latitude (400S) to northern latitude (600N). Columbus reported that the natives of the Americas liked to smoke tobacco to drive away fatigue. Tobacco leaves are used for ritual ceremonies and medicinal materials among the Indians. Then the conquerors and explorers from Europe began to smoke tobacco leaves so that this habit spread throughout the world.

The cultivation and use of tobacco in Indonesia has been known for a long time. The tobacco commodity has quite an important meaning, not only as a source of income for farmers, but also for the country. Business Tobacco farming is a labor-intensive business. The various types of tobacco cultivated are very diverse and spread in almost 20 provinces and 98 districts/cities in Indonesia.

Historically, tobacco was first planted on the island of Java in 1600 by the Portuguese, then in 1650 its cultivation began to spread to various regions in Indonesia. In 1830 seeds introduced from Manila, Philippines were planted in Kerawang and Pasuruan. Between 1870-1875 there was an expansion of the tobacco growing area, and it was widely developed in Kediri, Pasuruan (Malang), Besuki, Probolinggo, Lumajang, Rembang, Kedu and Banyumas. At that time, most of the tobacco varieties planted were descendants of the Manila and Havana tobacco hybrids.

### **International Agreement**

The use of tobacco as cigarettes has been regulated internationally in the 2003 *Framework Convention on Tobacco Control (FCTC) in the form of a convention which is a form of international agreement*. In International Agreements, various terms are known to refer to an agreement or agreement between countries such as conventions , protocols and so on, which have different legal consequences from one to another.

### **Human Rights Framework for Tobacco Control Policy**

The widespread impact of the use of tobacco products on public health throughout the world has generated great concern from the international community. *The Indonesian NGO*

*Coalition for Tobacco Control* said that Indonesia is a country with a very large number of smokers in the world. They stated that very high cigarette production is a potential threat to the health of people who live around smokers, including pregnant women and children who are the most vulnerable group to the effects of smoking.

The first obligation requires the state's obligation to refrain from intervening, except under legitimate law. The second obligation emphasizes the activeness of the state in taking legislative, administrative, judicial and practical steps necessary to ensure the realization of human rights. The third obligation requires the obligation to protect rights from possible human rights violations committed by non-state parties. The three forms of state obligations are inherent when a state ratifies the main human rights instruments. For example, when the Indonesian state ratifies the *International Covenant on Economic, Social, and Cultural Rights*, or known as KIHESB, then the norms contained in the KIHESB are binding on the Indonesian state and apply as national law (supreme) . *law of the land* ). The "obligation to fulfill" among others, is demonstrated by adopting all appropriate legislative, administrative and budgetary measures to realize human rights, for example developing regulations on comprehensive tobacco control in the context of realizing the right to health.

The right to live healthy is a basic right that must be guaranteed, because health is part of the primary needs of every human being. The healthy condition of body and soul will enable every human being to carry out his activities and work. Health is part of the need for a prosperous life. This kind of right is one of the basic rights in health care ( *the right to health care* ). The word " *health* " has two meanings in Indonesian, namely " healthy" or "health". Healthy describes the condition or state of the subject, for example: healthy children, healthy people. While health describes the nature of the subject, for example human health, public health, individual health.

## METHODS

The author uses a normative juridical approach. It is called normative juridical research because it discusses the doctrines or principles in the science of law. The research approach used in this research is *Statute Approach* (law approach). This research was conducted by analyzing the laws relating to the object of research. Data analysis in writing this thesis was carried out using qualitative analysis methods.

## RESULTS AND DISCUSSION

### **The Framework Convention on Tobacco Control (FCTC) regulates the use of tobacco as cigarettes according to international law**

#### 1. Framework Convention on Tobacco Control (FCTC)

*The Framework Convention on Tobacco Control* (FCTC) is an international agreement in the form of a convention that controls tobacco use whose supervision is under *the World Health Organization*. Indonesia has not ratified the FCTC until now, while many countries in the world have ratified the FCTC. The FCTC draft was drafted in 1999 and was completed by WHO in February 2003 after going through six international negotiation meetings and several regional meetings. The Government of Indonesia plays an active role in all international meetings organized by *the Intergovernmental Negotiating Body* (INB) in Geneva (six times), as well as in regional meetings between member countries of the WHO Southeast Asia Region (WHO SEARO) and ASEAN.<sup>25</sup> The Indonesian government is represented by the Ministry of Health, Ministry of Foreign Affairs, Ministry of Industry and Trade, Ministry of Finance, and the Food and Drug Supervisory Agency.

#### 2. Legal Analysis Has Not Been Ratified by the Framework Convention on Tobacco Control (FCTC) by Indonesia

The definition of an international agreement according to the 1969 Vienna Convention is an international agreement entered into between countries in a written form and governed by international law, either in the form of a single instrument or in the form of two instruments that are interrelated regardless of their names. According to the Statute of the International Court of Justice article 38 (1), International Agreements are one of the sources of International Law. In general, international law is defined as a set of rules and regulations that bind and regulate relations between states and other legal subjects in the life of the international community.

### 3. Negative and Positive Impacts of Not Ratifying the FCTC for Indonesia

#### a. Negative impact

The negative impacts for Indonesia because it has not ratified the FCTC are:

- 1) It has an impact on the country's income from exports and imports of cigarettes.
- 2) Losses in Bilateral Relations with other Countries.
- 3) Impact on Indonesian Human Resources.
- 4) Increasing morbidity and mortality due to smoking.
- 5) Did not have the opportunity to take part in *the Conference of Party*.

#### b. Positive impact

As for the positive impacts, Indonesia will not be bound by the rules in the FCTC which recommend reducing tobacco production and replacing it with other plants. Thus, Indonesia can still export and import tobacco, both in the form of raw tobacco and tobacco products. There are several articles that threaten the domestic tobacco products industry, namely Articles 8, 11 and 13 of the FCTC. Article 8 regulates smoke-free areas, article 11 regulates packaging, and article 13 regulates advertising.

### **Cigarette Regulation in Indonesia**

In Indonesia, smoking is not a strange thing. Indonesian people have long been dependent on cigarettes and tobacco. In fact, even for traditional events, using cigarettes as a banquet in the carano, especially in Minangkabau is common. Even though smoking has a great impact on health in the long term, and an addict will not be easily separated from smoking. The international community has long been aware of this and has worked around this by issuing the FCTC, but Indonesia has not ratified the convention. Even so, the Indonesian government has issued several regulations in the form of Government Regulations (PP) to regulate the use of cigarettes because a legal basis is required to prosecute smoking.

### **Draft Law on Tobacco Affairs**

Tobacco as referred to in the elucidation of Article 19 paragraph (2) of Law Number 18 of 2004 concerning Plantations, is included in strategic plantation commodities that have an important role in social, economic and environmental development. So that the state is obliged to provide protection for this commodity from upstream (at the farm level) to downstream (at the industrial or processing level). As is well known, Indonesia is the sixth largest tobacco producer in the world after China, Brazil, India, the United States and Argentina. The area of land planted with tobacco reaches more than 220 thousand hectares and is spread across 14 provinces, with the number of tobacco farmers in 2014 reaching 1.78 million people. Nearly 90% of Indonesian tobacco comes from three provinces, namely: East Java (55%), Central Java (22%) and NTB (12%), the rest comes from the Special Region of Yogyakarta, North Sumatra, West Java, South Sulawesi, West Sumatra and Bali. The economic value obtained by tobacco farmers reaches 51-54 million per hectare, far greater than the economic value of other agricultural products.

Until now, tobacco is mostly used as a raw material for cigarettes. Even though tobacco can also be used for ingredients for herbal medicines and perfumes, even though it requires expensive technological support and not many domestic industries have developed it. The



development of domestic tobacco must be focused on how to cultivate tobacco plants and produce them as well as efforts to increase the welfare of tobacco farmers. So that in terms of the health aspect it is part of an important aspect but the regulation is more regulated separately from the regulations on tobacco.

### **Laws that have Relevance to Tobacco Affairs**

Although there is no specific law regarding tobacco, there are several laws related to smoking and containing tobacco plants in their articles, namely:

1. Law Number 36 of 2009 concerning Health

This law was formed with the consideration that health is a human right and one of the elements of welfare that must be realized in accordance with the ideals of the Indonesian nation as referred to in Pancasila and the 1945 Constitution of the Republic of Indonesia.

2. Law Number 12 of 1992 concerning Plant Cultivation Systems

The tobacco issue is not specifically regulated in Law no. 12 of 1992 concerning the Plant Cultivation System (hereinafter referred to as the Plant Cultivation System Law), but because the regulation regarding tobacco includes agriculture and the cultivation of tobacco plants, the related articles become the legal basis horizontally.

3. Law Number 39 of 2014 concerning Plantations

Law Number 39 of 2014 concerning Plantation also has relevance to tobacco, because tobacco is a type of plant so it has the concept of other types of plants that are classified in the context of plantations. This is clearly illustrated in Article 1 number 1, number 2 and number 3 of Law Number 39 of 2014 concerning Plantations.

4. Law Number 19 of 2013 concerning Protection and Empowerment of Farmers

If Law Number 39 of 2014 concerning Plantations mandates the need for plantation business empowerment, Law Number 19 of 2013 concerning Protection and Empowerment of Farmers is even more concrete by mandating the need for protection and empowerment of farmers. In Article 1 point 1 Law Number 19 of 2013 concerning Protection and Empowerment of Farmers formulates what is meant by protection of farmers.

### **CONCLUSION**

Based on the description that has been described above, the researcher tries to put forward several conclusions regarding the main matters that have been discussed, as for some of these conclusions, namely:

1. The use of cigarettes at the level of international law has been regulated in the 2003 FCTC ( *Framework Convention on Tobacco Control* ) which has been signed by 168 countries and ratified by 57 countries and is binding on the countries that ratify it.
2. The use of cigarettes in Indonesian national law is regulated in Government Regulation No. 19 of 2003 in conjunction with Government Regulation No. 81 of 1999 in conjunction with Government Regulation No. 38 of 2000 concerning Cigarette Safety for Health and a Draft Law on tobacco has been formed but until now it has not been enacted.

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