

# Legal Protection Of Children From The Dangers Of Cigarettes Based On International And National Law

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**Abstract:** *The international world has set the protection of child rights in some conventions, most specifically the issue of cigarettes poured in the form of FCTC and MPOWER where the Convention aims to protect current and future generations from the adverse effects of tobacco consumption and exposure to tobacco smoke against health, social, environmental and economic. Article 16 of the FCTC has said that member countries prohibit the sale of tobacco products to underage people according to their respective national laws. Tobacco product advertisements, promotions and sponsors target adolescents, however, they must accelerate efforts to improve public health status, especially protecting children by controlling one of the main risk factors so that they can withstand the epidemic of non-communicable diseases by accessing or approving the FCTC. One of the problems still faced by children in Indonesia is the gap that occurs in various aspects, one of which is protection against child health. The government as the bearer of the mandate of national development as stated in the 1945 Constitution is obliged to remove the gap.*

**Key Words:** *Framework Convention on Tobacco Control, Child Protection, Cigarettes.*

## 1. INTRODUCTION:

Article 25 Paragraph 2 of the Universal Declaration of Human Rights states that "Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection", meaning that mothers and children are entitled to special care and assistance, it also states that all children born inside and / or outside of marriage must receive protection. the same social. The level of interest in human rights in the international realm is on a very high priority scale, considering that human rights are placed under international guarantees in the UN charter, namely in the Convention on the Right of the Child , so that countries that are members of the The UN cannot escape the issue of the importance of human rights. [1] Cigarettes are the three risk factors that most contribute to death. The likelihood of smokers dying from several types of diseases related to smoking increases. The value of the loss of life is known as the cost of mortality. A measure used to follow the value of life which is based on the monetary value of life. Calculations can be done using a human capital approach, which values life based on what individuals produce. There is also awillingness to pay approach, which values life based on what they dare to bear to avoid illness or death. [2]

The environment is one of the causes of smoking for most children. Cigarettes that are easily available anywhere and by anyone, for example, there is a shop in front of the school that displays cigarette billboards, meaning that kids will see it every day. Child smokers argue that smoking is attractive, makes it easier to socialize, easy to concentrate and makes life easier. [3] Ample scientific evidence that exposure to cigarette smoke is very dangerous for the health and development of children even for babies who are still in the womb. Even though the impact of cigarette use will be felt in the next 15-20 years, namely when children reach their productive age. As many as 225,700 people die every year due to smoking in Indonesia, and 7% of them, or around 15,844 people are women. [4] This proves that not only children, women are also a vulnerable group, who become second-hand smoke (passive smoking) and are at risk as dangerous as first-hand smoke (active smokers). For this reason, protection against the effects of tobacco is not only targeted at children, but also at women. "[5] Tobacco and cigarettes have become a global public concern and epidemic, the World Health Organization (WHO) believes that an effective way to deal with it is through international law. On 16 June 2003, WHO concluded the Framework Convention on Tobacco Control (FCTC) [6] which aims to protect current and future generations from the effects of cigarette exposure. The FCTC started in 1999, which was initiated by developing countries, Latin America, India, Thailand and Indonesia. Because it is a global problem, it is estimated that 70% of people will die in the 21st century in developing countries. On May 21, 2003 the FCTC was approved in the world session, but Indonesia canceled its signing.

Article 16 of the FCTC states "Each Party shall adopt and implement effective legislative, executive, administrative or other measures at the appropriate government level to prohibit the sales of tobacco products to persons under the age set by domestic law, national law or eighteen", in Article The FCTC calls on state parties to prohibit the sale of tobacco products to children under 18 years of age, prohibit the provision of free tobacco products,

prohibit the sale of cigarettes or cigarettes in small packages that make it easier for minors to buy them, and create regulations that accompanied by sanctions on sellers and distributors who violate the provisions above.

## 2. CONCEPTUAL FRAMEWORK:

### a. Legal Protection

CST Kansil states that Legal Protection is a variety of legal measures that must be provided by law enforcement officers to provide a sense of security, both mind and physically from interference and various threats from any party. [7]

### b. Children

According to RA Kosnan "Children are young people who are young in their soul and life journey because they are easily influenced by their surroundings". [8] Therefore, children need to be taken seriously. However, as the most vulnerable and weak social beings, ironically children are often placed in the most disadvantaged position, do not have the right to speak out, and they are often victims of violence and violations of their rights. [9]

### c. Cigarettes

Cigarettes contain more than 4000 chemical compounds, of which 60 are carcinogenic. In the available evidence, people who are exposed to secondhand smoke for a long time will increase the risk which is fatal to health.

## 3. THEORITICAL FRAMEWORK:

### a. Theory of Legal Protection

The theory of legal protection is a theory that studies and analyzes the form or form or purpose of protection, the protected legal subject and the object of protection provided by law to its subject.

### b. Theory of Human Rights

The theory of natural rights was then translated into various "Bills of Rights" such as those enacted by the British parliament (1689), the United States Declaration of Independence (1776), the Declaration of the Rights of Humans and Citizens of France (1789). More than a century and a half later, at the end of World War II, the Universal Declaration of Human Rights (1948) was disseminated to the international community under the banner of the theory of natural rights. The legacy of the theory of natural rights can also be found in various human rights instruments in the Americas and Europe.

### c. Theory of Justice

According to John Rawls, an American philosopher who is considered one of the foremost political philosophers of the 20th century, focused on the main area of justice which according to him was the basic structure of society. [10]

## 4. LITERATURE REVIEW:

Legal protection is the protection of dignity and dignity, as well as recognition of human rights possessed by legal subjects based on legal provisions from arbitrariness or as a collection of rules or rules that can protect one thing from other things. With regard to consumers, it means that the law provides protection for the rights of customers from something that results in the fulfillment of these rights. [11] Indonesia has ratified the UN Convention on the Rights of the Child through Presidential Decree No. 36 of 1990. With the ratification of the Convention, legally the Indonesian government has the position of an obligation bearer who is obliged to fulfill, protect and respect children's rights, while the rights holder is every child in Indonesia. In simple terms, conventions on children's rights can be grouped into three things, first, regulating the parties who are obliged to bear rights, namely the state. Second, the recipients of the rights, namely children. Third, contains the forms of rights that must be guaranteed to be protected, fulfilled and enhanced. The main form of regulation that specifically regulates the control of smoking problems is a Government Regulation no. 19 of 2003 concerning Safeguarding Cigarettes for Health, Article 2 states that it aims to prevent smoking-related diseases for individuals and the community. This is done by: a) protecting public health against disease caused by cigarette use; b) protect residents from environmental forces and the effects of advertising; and c) increase public awareness about the dangers of smoking on their health. The use of cigarettes results in damage to both bodily, economic and social functions, from an individual or a community perspective. This has been proven by the many studies and analyzes from several academics who are concerned about the dangers of smoking. Cigarettes are made with the main ingredient of dried tobacco leaves, containing 1% - 3% nicotine compounds. When the cigarette is lit and the smoke is inhaled, the nicotine in the blood increases.

## 5. METHOD:

The method used in this research is normative, that is, examining legal principles, legal systematics, legal history of legal synchronization level, and comparative law.

## 6. DISCUSSION:

Every parent wants their child to grow healthily both physically and mentally and get protection and also Indonesian children have the right to live and develop optimally, as stated in the 1945 Constitution (UUD 1945) through the Opening of the Fourth Paragraph which mandates the Government to: protect the entire Indonesian nation and all the blood of Indonesia, promote public welfare, educate the nation's life, participate in implementing world order based on independence, eternal peace and social justice. [12]

Article 28 B of the 1945 Constitution states that the state guarantees every child to live, grow and develop and is entitled to protection from violence and discrimination. Article 28 G which states that every person has the right to protection of himself, family, honor, dignity and property under his control, as well as to the feeling of security and protection from the threat of fear to do something that is a human right.

In the process of growth, so that children can become tough, potential and reliable people as successors to the ideals of the nation, as the nation's next generation children must receive protection by the State and the Government. According to Franz Magnis Suseno, Human Rights (HAM) are rights that are inherently owned by humans because of their dignity as human beings from birth, which means that children also have human rights as they should.

In general, the prevalence of smoking is higher in people with low educational and income levels, living in rural areas and working status. Cigarette smoke can cause heart disease, impotence, cancer, lung damage and increase the risk of sudden death by 30%. Passive smoking is a major health problem in Indonesia. Women, children and toddlers are the groups most children exposed to secondhand smoke exposure. The impact on pregnancy can cause babies born with low birth weight and premature babies, sudden infant death syndrome, and effects on the baby in the form of stunted fetal growth in the womb and spontaneous abortion.

Some of the losses that Indonesia has experienced because it has not signed and acceded to the FCTC, including [13]: First, Indonesia is currently the target market or the main target market for the multi-national cigarette industry which risks damaging the health of the nation's generation and the quality of Indonesia's human resources. Second, cigarette consumption in Indonesia will increase sharply, especially among vulnerable groups such as children, pregnant women and the poor. This will increase the morbidity and mortality rates related to diseases caused by cigarette consumption. Third, Indonesia does not have the opportunity to participate in the Conference of Party, which is a conference of countries that have ratified the FCTC to fight for their interests and are involved in negotiating the implementation of the FCTC guidelines and protocols. Fourth, Indonesia has lost its dignity as a country that protects and is responsible for improving the degree of public health. Legal action needs to be taken as a tobacco impact control strategy. The FCTC sees that accountability is an important program in controlling the impact of tobacco. The participating countries agree to take a legislative and legal approach in tobacco-related courts.[14]

Recognition obtained by another country is closely related to the interactions a country has in the international world. With the active participation of a country in the international world, the association of that country will also increase with other countries and within international organizations. This will have an impact on the ease with which a country can enter into an international agreement and other cooperation that is beneficial for that country. So that by not ratifying the FCTC by the Indonesian government, it will cause losses in bilateral relations with other countries, especially with countries that have ratified the FCTC or international organizations. Indonesia will be isolated by other countries in terms of international relations, because Indonesia is a country that actively participates in the FCTC from the beginning to the end of the discussion. [15]

Several reasons why Indonesia has not ratified the FCTC, one of which is in terms of culture, history and economy. From a historical and cultural perspective, people have always used cigarettes in the form of kretek. Kretek is a traditional cigarette made from tobacco, clove buds, and "sauces" seasoning, either traditionally made by hand or by machine. This type of cigarette is the only one produced in the world by Indonesia, and kretek also uses the best quality tobacco that can only be produced in certain areas in Indonesia, so kretek becomes a culture. Meanwhile, from an economic perspective, tobacco is considered a product of its strategic existence, because Indonesia is one of the countries that produces quality tobacco in the world. Then because the tobacco industry is an industry that involves many parties and also economists and tobacco entrepreneurs, they think that by ratifying the FCTC, Indonesia will experience a reduction in state income, increase unemployment and will damage the welfare of clove farmers.

Indonesia already has Law Number 32 of 2002 Concerning Indonesian Broadcasting Article 46 Paragraph 3, although it has not ratified the FCTC, which targets advertising, promotion and sponsorship of tobacco products to target youth, even so it must accelerate efforts to improve public health status, especially to provide protection for children - children by controlling one of the main risk factors so as to contain the epidemic of non-communicable diseases by acceding to or agreeing to the FCTC.

## 7. ANALYSIS:

### A. The Effect Of Cigarette Tax On Child Smoker Levels

Chairman of the Indonesia Lawyer Association on Tobacco Control (ILATC) Muhammad Joni said that protecting children from smoking is an interest that must be prioritized. He is of the opinion that the price of cigarettes is still considered cheap in Indonesia so that children can still afford it. Caring for and protecting children is protecting life itself. We should all be actors in child protection, including protecting children from the dangers of smoking. The goal that is expected by every business actor is a large profit from the sale of the merchandise it produces. An effective and persuasive marketing strategy is very important in offering its merchandise to consumers. Promotion is the main choice in implementing the cigarette product marketing strategy. Of course, in offering goods, business actors will try to show the quality or superiority of their products in the hope that consumers will be interested. The promotion of cigarettes through broadcasting media, in principle, is allowed only not to demonstrate the form of the product. This means that business actors are required to be as creative as possible to make an attractive promotion so that consumers buy and consume their products, this condition is considered very difficult for cigarette business actors to promote their products but that does not mean it cannot be done. The Elucidation Section of Article 46 paragraph (3) of the Broadcasting Law also does not provide detailed reasons why this limitation was imposed. Indeed, when viewed from the point of view of the Principles, Objectives, Functions and Direction of Broadcasting, the Broadcasting Law does emphasize broadcasting activities as mass communication activities that function as a medium for information, education, healthy entertainment, control, economy and social glue (Article 4) with due regard to the quality of Indonesia's human resources (Article 5 letter c) based on Pancasila and the 1945 Constitution. If linked with the principles and functions of broadcasting, the existence of the provisions of Article 46 paragraph (3) of Law no. 32/2002 is a manifestation of efforts to maintain a balance between the quality of human resources on the one hand and economic interests on the other. [16]

## **B. Protection of Children from Cigarette Smoke**

### **1. The Effectiveness of the Implementation of Non-Smoking Areas**

Various policies have been made in order to achieve a healthy generation, one of which is the mandatory implementation of the No Smoking Area policy which can be started from health, education and other public places institutions. This is in accordance with Health Law No.36 of 2009 article 115 paragraph 2 which states that "Local governments are required to establish smoking-free areas in their areas". No smoking area is a room or area that is declared prohibited from smoking or activities to produce, sell, advertise, and / or promote tobacco products. Non-smoking areas include health service facilities, places for teaching and learning, places for children to play, places of worship, public transportation, workplaces, and designated public places and other places. The mandate of the Health Law which obliges each region to establish KTR has been welcomed by several regions in Indonesia. Institutions that have implemented Smoking Free Areas are generally health service institutions such as hospitals, health services, and health centers, educational institutions such as elementary, junior and senior high schools, and several private companies such as banks, hotels and plazas. The formulation of this policy shows the strong commitment of the Regional Government in protecting its people from the dangers of smoking. [17]

### **2. Sanctions For Cigarette Consumers That Disturb Children's Health**

The provisions for sanctions on the FCTC are contained in Article 13 number 7, namely Parties that prohibit certain forms of tobacco advertising, promotion and sponsorship have the right to prohibit various forms of cross-border tobacco advertising, promotion and sponsorship from entering their territory and imposing sanctions that the same applies to advertisements, promotions and sponsorships originating from within the country based on the provisions of applicable national laws. This verse does not endorse or approve any specific legal sanctions. With regard to law enforcement, the existing laws and regulations do not specify which official officers can enforce the law. Some local governments, which have issued local regulations on smoke-free zones, do not specify law enforcement officers and very light sanctions. For cigarette industry players, the Health Law provides criminal sanctions, violations of Article 114 concerning the production and import of cigarettes without a danger warning label can be punished with a maximum 5 years imprisonment and a fine of up to IDR 500,000,000.00 (five hundred million Rupiah). Violators of the smoke-free zone provisions can be punished with a maximum fine of IDR 50,000,000.00 (fifty million Rupiah).

## **8. CONCLUSION:**

From the discussion as explained earlier, several conclusions can be drawn, including:

- Responsibilities The international community is well aware that children are the nation's next generation who must get the rights of adults without exception. So that the created Universal Declaration of Human Rights was, in which Article 25 paragraph 2 states that mothers and children are entitled to special care and assistance. Then also in the Convention on the Rights of the Child it was formulated that children's rights are "inherent" to life, which means that children are not a gift from the State, but the right is part of a child's life. Especially in the field of child protection against cigarettes, the international community then formed a framework agreement called the Framework Convention on Tobacco Control which is an international

agreement regulating the control of production, distribution and consumption of cigarettes which countries of the World Health Organization are forced to comply with.

- Indonesia has many laws and regulations governing child protection, however, children's rights cannot be protected. Of course, Indonesia as a country that has ratified the CRC must comply with the principles and provisions in establishing policies in the context of protecting children's rights. Indonesia's involvement as one of the countries that has ratified the CRC is a form of Indonesia's serious concern for children, for this every regulation and policy made by Regulations on controlling tobacco use / smoking in Indonesia is in the form of Government Regulations, Regional Regulations, and Governor Regulations.

## 9. SUGGESTIONS:

The suggestions given by researchers are as follows:

- So that further research development can be deepened by the case study method. Or with quantitative research, which is conducting a survey of the public regarding a case of protecting children from the dangers of smoking. This also relates to the concept of child safety and health.
- The government must pay attention to children's rights, one of which is by following WTO policies as adhered to by developed countries by ratifying the FCTC to bind itself to international treaties. The government must be aware of limiting or preventing it because the effects will occur in the long term.

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