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## **Legal Protection Against Tobacco Smoke Harmful Effects on Children**

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**Abstract:** Tobacco smoking is harmful either for smokers or second-hand smokers. Indonesia is the country with the third highest number of smokers in the world and the largest number of smokers in Southeast Asia. Active smokers in Indonesia estimated to reach 70 million people. Of that number, 7.4% are children aged 10-18 years. The aims of this research are to examine the legal protection of children from the dangers of tobacco smoke and also examine the role of the government in protecting children from the dangers of tobacco smoke. The research method used is normative research. Normative legal research is conducted using a variety of primary legal materials, which are in the form of statutory regulations, as well as secondary legal materials. In Indonesia, a number of legal regulations focus on protecting children from the negative effects of smoking, both directly and indirectly. Some of these regulations include: Law number 35 of 2014 concerning Child Protection, Law number 17 of 2023 concerning Health, Government Regulation number 109 of 2012 concerning Safeguarding of Materials Containing Addictive Substances in the Form of Tobacco Products for Health, Regional Regulations on Non-Smoking Areas (KTR).

**Keyword:** Children, Legal Protection, Dangers of Tobacco Smoke.

### **INTRODUCTION**

A healthy environment, including a tobacco-free environment, is one of the rights that are vital to protect future generations. The 1945 Constitution of the Republic of Indonesia as the highest law and considered the highest normative structure within the country guarantees the right of every person to legal protection against exposure to hazardous chemicals including tobacco smoke. Article 28H Paragraph (1) of the 1945 Constitution stipulates that "Every person shall have the right to live in physical and spiritual prosperity, to have a home and to enjoy a good and healthy environment, and shall have the right to obtain medical care." The government of Indonesia ratified the 1989 United Nations Convention on the Rights of the Child (UNCRC) to address this issue, which mandate governments to prioritize the welfare of children, protect their health right, and adopt legislation against industries that may compromise these rights, including the tobacco industry (Gispem and Toebe, 2018). The government has also enacted

Law Number 17 of 2023 regarding Health, which guarantees public health protection against the negative impacts of addictive substances, particularly tobacco products. Integrating human rights into tobacco control policies can enhance the impact of health prevention and promotion initiatives, thereby ensuring child rights are upheld. (Susetiyo et al., 2020)

As of 2019, there are approximately 1.14 billion smokers worldwide. This number has increased from 0.99 billion in 1990 due to population growth. The smokers consumed 7.41 trillion cigarette-equivalents tobacco in 2019, these numbers are likely to increase over the coming decades (GBD 2019 Tobacco Collaborators, 2019). A substantial proportion (80%) of adolescent smoking experiencers aged 13-15 years, initiated cigarette smoking before the age of 13. Specifically, 22.8% start at  $\leq 9$  years, 18.8% at 10-11 years, 36.8% at 12-13 years, and 21.6% at 14-15 years (Xing, Zhao and Xi, 2022). Meanwhile Indonesia has the highest smoking rate in Southeast Asia and the third-highest smoking rate globally, with 34% of adults smoking daily. (Muslim et al., 2019). Based on data from the 2023 Indonesian Health Survey (SKI), the number of active smokers in Indonesia is estimated to reach 70 million people. Of that number, 7.4% are smokers aged 10-18 years. Children and adolescents are the groups with the most significant increase in the number of smokers. Based on data from the Global Youth Tobacco Survey (GYTS) in 2019, the prevalence of smokers in school children aged 13-15 years increased from 18.3% (2016) to 19.2% (2019). Meanwhile, SKI 2023 data shows that the 15-19 age group is the largest group of smokers (56.5%), followed by the 10-14 age group (18.4%). As for e-cigarette users among teenagers have increased in the last 4 years. From the results of GATS in 2021, the prevalence of e-cigarettes increased from 0.3% in 2019 to 3% in 2021. (Tarmizi, 2024).

Tobacco smoking is harmful either for smokers or second-hand smokers due to the presence of numerous toxic substances such as nicotine, acrolein and combustion byproducts. Nicotine is highly addictive, acting on nicotinic acetylcholine receptors (nAChRs) in the brain. These receptors are involved in the release of neurotransmitters like dopamine, which contribute to nicotine's reinforcing properties (Leslie, 2020). Acrolein, a highly reactive aldehyde, is a major toxic component in tobacco smoke, linked to diseases such as asthma, COPD, and respiratory cancers due to its cytotoxic and genotoxic properties. The inhalation of toxic smoke from burning tobacco is the primary cause of tobacco-related diseases and deaths. These byproducts include carbonyls and fine particulate matter, which contribute to cardiovascular morbidity and mortality (Hikisz and Jacenik, 2023). Exposure of tobacco smoke in children has been linked to lower cognitive. Studies indicate that children living with parents who smoke exhibit reduced cognitive performance, with decreases in cognitive outcomes ranging between 0.09 and 0.17 standard deviations. This suggests that tobacco exposure negatively affect children's academic performance and intellectual development (Srivastava and Trinh, 2021). In addition to cognitive deficits, children exposed to tobacco smoke also show poorer non-cognitive outcomes. These include behavioral problems such as increased impulsivity, reduced cognitive control, and higher sensitivity to rewarding substances (Gatzke-Kopp and Rice, 2023). Tobacco use is also cause of the preventable deaths, killing more than 8 million individuals annually worldwide. Over 7 million of these fatalities are due to direct tobacco consumption, whereas approximately 1.3 million arise from non-smokers exposure to second-hand smoke (WHO, 2023). In Southeast Asia, paternal smoking alone increases the odds of child mortality (OR = 1.25), maternal smoking alone has an even higher impact (OR = 2.40), and both parents smoking together further increases the risk (OR = 2.60) (Andriani et al., 2019). In Indonesia, smoking-related deaths accounted for 427,948 fatalities (22.6%). Of this total, 29.2% were from those over the age of 10 who smoked, accounting for 34.7% of total deaths. The prevalence of smoker deaths in the 15-24 age range is predicted to rise from 17.3% to 18.6%. The number of fatalities in the productive age group, which is 25-34 years old, increased from 29.0% in the previous year to 31.1%. Mulyani and Muryati (2020).

Children are crucial, for shaping the future of a nation, therefore it is essential to nurture and safeguard their physical, as mental and social well-being to ensure they grow and develop in a safe and supportive environment. Indonesia has a duty to offer care for its ones (Andaryawan and Wulansari cited in 2024). Exposure to smoke can harm children in ways, whether they're breathing it in directly or as secondhand smoke, it can impact their health negatively. Hinder their academic and intellectual growth while also raising the risk of mortality for them significantly. It's vital for the authorities to put in place regulations that limit children contact with tobacco smoke to protect their health away and promote a healthier society in the future. By focusing on reducing smoking exposure as a priority concern, for public wellness efforts and initiatives the government can pave the way for a more prosperous future, across the entire nation.

Henceforth, based on the background above, this study aims to examine how children are legally safeguarded from the harmful effects of tobacco smoke and discuss the government responsibility, in shielding children from such risks.

## **METHOD**

In this study, the legal research method used is the normative legal research method. Legal issues are understood as legal problems that are encountered and therefore seek legal rules, principles and doctrines in order to find solutions to the legal problems faced (Negara, 2023). In this study, there are two approaches employed, the conceptual approach and the statute approach. This research method makes use of a variety of primary legal materials, which are in the form of statutory regulations, as well as secondary legal materials. The literature relating to legal protection for children regarding the dangers of tobacco smoke according to health law reviewed. These materials are then connected to events that occur in the field as a source of research material.

## **RESULTS AND DISCUSSION**

### **Legal Protection Against Tobacco Smoke Harmful Effect on Children**

Legal protection is a matter or action to safeguard legal subject in accordance with relevant laws and regulations, including penalties for breaches of contract. Legal protection ensures the rights and obligations of individuals to pursue their interests and engage in interpersonal relationships (Mertokusumo, 2019).

The concept of legal aid is every citizen's basic or constitutional right that guarantee legal protection and equality before the law as form of recognizing human rights. There are two types of legal protection facilities according to Philipus M. Hadjon, consisting of preventive and repressive legal protections: (Mandjo and Sarson, 2021)

1. Preventive legal protection provides an opportunity for legal subjects to submit objections or opinions before a government decision is made. Preventive legal protection provided by the government for the purpose of preventing conflict or infringement of rights before happening. Preventive legal protection is crucial for government actions predicated on discretionary authority, as it compels the government to exercise caution in decision-making.
2. Repressive legal protection is a legal mechanism used to protect the subject in the event of a violation of the rights guaranteed by the law. Thus, this repressive legal protection aims to provide protection via a dispute resolution mechanism. The handling by a court or other dispute resolution institutions falls under the category of legal protection.

When discussing child protection, there are at least two aspects involved. The initial aspect pertains to the statutory and regulatory policies governing child protection. The second aspect pertains to the execution of the statutory policy. Concerning the first aspect, there is currently adequate legislation in place to address issues related to child protection. The second aspect is whether the availability of various legislative instruments concerning children's rights, along

with efforts to eliminate practices that violate children's laws and disregard their rights, can ultimately be brought to an end (Minan, 2024)

In Indonesia, legal protection for children against tobacco exposure stated by Law Number 35 of 2014 article 45B paragraph (1) and paragraph (2): "(1) government, local government, society, and parents are obliged to protect children from acts that interfere with the health and growth and development of children; (2) in carrying out their obligations as referred to in paragraph (1), the government, local governments, societies, and parents must carry out activities that protect children". Early smoking evidently leads to chronic diseases in later life. The younger a somebody is, the more susceptible they are to nicotine addiction and the more difficult it becomes to overcome it. The WHO indicates that nicotine exposure in children and teenagers adversely affects brain development. Conversely, children and adolescents who begin smoking at an early age are more prone to acquiring asthma and experiencing impaired lung growth and development, potentially leading to conditions such as COPD (Chronic Obstructive Pulmonary Disease). Initiating smoking at a young age will undoubtedly impair performance and endurance. Both children who actively smoke and passive smokers face health hazards, with passive smokers potentially experiencing much greater dangers. Cigarette smoke has a minimum of 4,000 chemical components, 400 hazardous chemicals, and 43 carcinogens capable of inducing cancer. Children exposed to cigarette smoke might develop several health issues, including coughing, dental caries, otitis media, ocular disorders, and respiratory complications (WHO, 2020).

Law Number 35 of 2014 Article 1 paragraph 1 in the Child Protection Law states that children are defined as people aged below 18 years and 10 months and that definition also includes the unborn child (still in the womb). Studies have confirmed that exposure to tobacco smoke is risk factor among pregnant women and babies as it is associated with birth of babies with shorter gestation period and lower weight at birth, as well as lower first-minute APGAR when compared to babies of non-smoking mothers. Carbon monoxide (CO) causes abnormal development of placenta vascularization, hypertrophy and hypoxia, thus reduces blood flow in the uterus. This mechanism may increase the risk of intrauterine growth restriction. Nicotine acts as a vasoconstrictor, which causes the withdrawal in newborns. (Simanjuntak et al., 2023) To protect the public from the dangers of tobacco products, the government has enacted Law Number 17 of 2023 concerning Health. According to Article 430 of Government Law Number 28 of 2024, about implementing regulations of Law Number 17 of 2023 concerning Health, the government is actively implementing measures to control the use of addictive substances, particularly tobacco products and electronic cigarettes. The goal of control the use of additive substances to:

1. **Control Addictive Substances:** In this regulation are established means to control the use tobacco substance such as cigarette or electronic cigarette, with the view of reducing their user number and the harm they cause to society.
2. **Public Health:** promote people's health by lowering the number of diseases and deaths which arise from smoking.
3. **Public Awareness:** the regulation emphasized on how education and advocacy concerning anti-smoking campaigns are important in changing public opinion towards smoking and encouraging activities that change the status quo. Fighting cigarette smoking should be a task for all people across the different sectors, especially for families and the education system where special care is given to children smoking or children being present when others are smoking (Prihatini et al., 2023).
4. **Environmental Protection:** Additionally, the regulation also extends to reducing the adverse effects of tobacco and cigarette smoke products as well as the active ingredients and smoke from the production processes themselves on the environment.

5. Community Participation: Active involvement from all community members in oversee the sale, distribution of tobacco products and electronic cigarette products are to be expected.

6. Financial constraints: There is also a provision in regulation which addresses the consumption of such goods and the expenditure of the health care system and low productivity of the labor market.

Regulations that focused on the safety of materials containing addictive substances in the form of tobacco products for health care also strengthened by government regulation number 109 of 2012. This regulation addresses numerous aspects of tobacco consumption control, particularly focusing on protecting children from the hazards associated with cigarettes. Key aspects of this regulation concerning child protection are:

1. The ban on selling cigarettes to children and adolescents under 18 years of age.
2. Ban on advertising, promotion, and sponsorship of tobacco products aimed at children and adolescents.
3. Implementation of smoke-free areas in public places and facilities commonly utilised by children, including schools and playgrounds.

To address the issue of exposure to tobacco smoke, Law Number 17 of 2023 Article 151 concerning Health mandates that Regional Governments must identify and establish Smoke-Free Areas/*Kawasan Tanpa Rokok (KTR)* within their jurisdictions. KTR is a designated smoke-free area where smoking, the sale, and advertising of tobacco products are strictly prohibited. These areas include public places such as schools, healthcare facilities, workplaces, public transport, playgrounds, place of worship and other areas where people congregate to ensure a healthy and smoke-free environment. The primary objective of KTR is to protect non-smokers from the harmful effects of secondhand smoke and to promote public health by reducing smoking-related diseases. By establishing KTRs, the government aims to foster a culture of health awareness, reducing the prevalence of smoking and its associated health risks in the community. Law that regulated KTR are Article 151 Law Number 17 of 2023 concerning Health, Common Regulation between Ministry of Health and Ministry of Internal Affair Number 188/MENKES/PB/I/2011, Regulation of Ministry Education and Culture Number 64/2015 and will be implemented in each local government. The enforcement of KTR regulations includes the implementation of strict penalties for violations, alongside continuous public education campaigns to raise awareness about the benefits of smoke-free zones for both individuals and society as a whole (Ulfa and Damayanti, 2021).

### **Role of The Government in Protecting Children from The Dangers of Tobacco Smoke**

The Convention on the Rights of the Child (CRC) represents a significant international accord established by the United Nations in 1989. This treaty holds the record for the most widespread ratification in the field of human rights, focusing on the protection and advancement of children's rights across the globe. The CRC details a range of rights for children, encompassing the right to survival, development, protection, and participation. It highlights that children deserve protection from exploitation, abuse, and neglect, ensuring that their best interests are a central focus in all decisions that impact them (Nurusshobah, 2019). The CRC does not specifically address tobacco smoke; however, it highlights the importance of protecting children's rights to health and a secure environment. Article 24 of the CRC clearly articulates that children possess the right to an optimal level of health, while Article 3 emphasizes that the best interests of the child must be a primary consideration in all actions related to children. Furthermore, the CRC is in harmony with the WHO Framework Convention on Tobacco Control (FCTC), which encompasses strategies to protect children from exposure to tobacco smoke and the promotional strategies employed by the tobacco industry. The FCTC seeks to reduce the demand for tobacco products and protect public health, particularly for children and young individuals (Muslimah, 2023).



The Indonesian government has shown its dedication to upholding children's rights by ratifying the Convention on the Rights of the Child (CRC) in 1989. This ratification highlights Indonesia's commitment to promoting and protecting the rights of children in multiple aspects of life. Nonetheless, the nation's initiatives to protect children's health rights, especially regarding protection from tobacco smoke, are still incomplete. The lack of ratification of the Framework Convention on Tobacco Control (FCTC) by the government serves as clear evidence of this situation. The FCTC serves as an essential tool aimed at protecting the public, particularly children, from the detrimental impacts of tobacco use and exposure. Without ratification of the FCTC, Indonesia's tobacco control measures and the protection of children's health from tobacco-related hazards remain incomplete and lack a comprehensive approach. Consequently, additional measures are required to ensure that Indonesia's dedication to children's rights is in alignment with strengthened tobacco control regulations (Hasan and Imansyah, 2023).

The government has taken steps to regulate advertisements for tobacco products in line with Government Regulation Number 28 of 2024. Article 446 specifically prohibits tobacco advertisements on digital social media platforms. Articles 447 to 451 outline the guidelines for advertisements, prohibiting targeting towards children and adolescents, and limiting advertising hours on outdoor video screens to the period between 10:00 PM and 5:00 AM. Additionally, Articles 454 and 455 specify that sponsorship and corporate social responsibility contributions from tobacco companies are prohibited from using brand names, logos, or imagery that may promote tobacco products and electronic cigarettes. The Indonesian Child Protection Commission (KPAI) reports that children's exposure to tobacco advertisements continues to be substantial. In 2023, KPAI reported that there were 13 million advertisements featuring tobacco-related content available to children (Prameswari, 2023). These advertisements are frequently crafted with creativity and contemporary language that resonates with children and adolescents. Research conducted in 2021 indicates that young individuals, particularly school children in the ASEAN region, were exposed to tobacco advertising. This exposure was linked to an increased probability of smoking susceptibility or initiation. Indonesia has not ratified the FCTC and has only implemented a partial ban on tobacco advertising. Consequently, advertisements are still allowed on television during certain evening hours, with limited restrictions on the imagery used or the size of print and outdoor advertising. Indonesia also allowed a tobacco company to sponsor music events. The event featured a photobooth with tobacco branding and a social media hashtag that encourage young concert attendees to take photographs and share their experiences online with friends. That exposure influences their attitudes towards cigarette brands or smoking. As demonstrated by the research presented, it is essential to implement stricter controls on tobacco advertisements to protect the health and well-being of young individuals (Stubb, 2021).

The smoking behavior of children and adolescents is significantly influenced by low cigarette excise taxes. Low excise taxes lead to a more affordable selling price for cigarettes, which facilitates access for children and adolescents, increasing the likelihood of their purchase and consumption. The World Health Organization indicates that Indonesia ranks among the countries in the Asia Pacific with the lowest cigarette prices, significantly lower than those in Malaysia and even Timor-Leste (WHO, 2020). For example, in 2017, 78.9% of promotions listed cigarette prices between IDR 600 and IDR 1,000, which is quite affordable for children. When compared to the price of eggs in the same year, which ranged from IDR 1,200 to IDR 1,500, the price of cigarettes was actually lower than the price of eggs. The lower cost of cigarettes in relation to eggs is evident in the spending habits of low-income families, who purchase cigarettes five times more frequently than they do eggs and milk. Cigarettes rank as the second most purchased item for low-income families, following grains (Zein and Sundari, 2018). Even with periodic increase in excise taxes and prices (approximately 10% annually),

tobacco products have become increasingly affordable, as the rate of price increases lags behind inflation and income levels have grown. Tobacco price trends in Indonesia show that tobacco products were 50% more affordable in 2016 than they were in 2002. Some analyzes suggest that the share of gross domestic product (GDP) needed to purchase 100 packs of cigarettes has decreased from 6% in 2002 to 4% in 2016, indicating that cigarettes have become more affordable for many individuals (WHO, 2019). A 10% increase in cigarette prices via excise is projected to decrease overall cigarette consumption by 3–6% (Adiotomo, Djutaharta and Hendratno, 2020). The decline in tobacco use will be observed across all age groups; however, the most significant effects of price increases will be experienced by children, adolescents, and individuals with low income. These groups tend to be more sensitive to price changes and are more likely to decrease their cigarette consumption. Furthermore, the practice of selling cigarettes individually exacerbates the issue. Article 434 of Government Regulation Number 28 of 2024 prohibits individual sales, with the exception of tobacco products such as cigars and electronic cigarettes. However, the absence of a clear sanction mechanism has resulted in the continued sales of individual cigarette. This increases the availability of cigarettes to school children who have limited pocket money. Reviewing the policy concerning excise prices and enhancing supervision of tobacco product sales is essential to safeguard the younger generation from the hazards of tobacco smoke.

## CONCLUSION

Indonesia's constitution guarantees a healthy environment, including a tobacco-free one, for future generations. The country ratified the 1989 UN Convention on the Rights of the Child to prioritize children's welfare and protect their health rights. Law Number 17 of 2023 ensures public health protection against addictive substances, particularly tobacco products. Early smoking can lead to chronic diseases, and both active and passive smokers face health hazards. Government regulations focus on tobacco consumption control, banning selling cigarettes to children and adolescents under 18, banning advertising and promotion, and implementing smoke-free areas. Law Number 17 of 2023 mandates Regional Governments to established KTR to protect non-smokers from secondhand smoke and promote public health. However, initiatives to protect children's health rights, particularly regarding tobacco smoke, are still incomplete. Ratification of the Framework Convention on Tobacco Control (FCTC) needed to be reviewed whether it is necessary for our country. It is essential to implement stricter controls on tobacco advertisements as exposure was linked to an increased probability of smoking susceptibility or initiation. Reviewing the policy concerning excise prices and enhancing supervision of tobacco product sales is essential because low cigarette excise taxes significantly influenced the smoking behavior of children and adolescents.

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