

Smoking in Human Rights Perspective in Indonesia

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ABSTRACT

Smoking is an activity carried out to fulfill one's pleasure, and for smokers this activity is a natural thing and is a person's right to smoke. The results of research by health experts smoking and the smoke it causes are very harmful to health, so it is necessary to protect human health and the environment. The problem is how to smoke in the perspective of human rights, because it is related to health and environmental protection. Through the method of normative juridical approach, the results of this study explain that, the basis of a rule of law is the protection of human rights, and human rights in question are the right to a good and healthy environment as explained in several legal provisions governing human rights. Setting the right to a good and healthy environment includes the right to live a healthy life from the effects of exposure to harmful cigarette smoke. The regulation of human rights in the protection of human rights is regulated at the international level, the 1945 Constitution and other statutory regulations up to the regional regulation level. Smoking activity carried out by smokers is not a human right, because the law regulates the provisions of these human rights.

Keywords: Human Rights; Smoke; Health; State law.

INTRODUCTION

The strengthening of human rights since the beginning of reform was understood as freedom over restrictive power, so that the problem of human rights is now understood as freedom to do whatever, even though this is not the case. This is because Indonesia adheres to a state of law, as stipulated in Article 1 paragraph (3) of the 1945 Constitution, "The Indonesian state is a state of law". Thus, the existence of human rights in the concept of a legal state related to the regulation of human rights by the state does not mean that there has been restraint by the state, but in its conception it is regulated by the state (Selian & Melina, 2018). A country based on law, which means there are also guarantees for the human rights of its citizens. Protection of human rights is a philosophy in a legal state, meaning that in a legal state the protection of human rights is a necessity (Aprita & Hasyim, 2020).

The act of smoking is understood as a human right, because for those who smoke, the act of smoking is a pleasure in itself that other people cannot prohibit, so that people smoke anywhere and anytime because it is a human right. This action is because by smoking a person feels an additional positive feeling, *first*, pleasure relaxation, namely smoking behavior only to increase or increase the pleasure already obtained, for example smoking after drinking coffee or eating. *Second*, stimulation to pick them up, namely smoking behavior is only done to please feelings (Elon & Malinti, 2019). Apart from that, there are many factors that make smoking a habit that is difficult to stop, so no one can ban it. Factors that influence smoking behavior include environmental factors, factors that can have a direct influence such as offering cigarettes, persuading to smoke, challenging and tempting to smoke and indirect influences such as the presence of strong models

in the environment such as teachers, parents who smoke (Ma'ruf, 2019). Muhtadin added that the factors that influence smoking behavior consist of parental influence, friend influence, personality factors, and advertising influence (Muhtadin, 2019). Likewise, psychological factors greatly influence a person's ability to smoke, because individuals who smoke do so to gain pleasure, comfort, feel free from anxiety, and also to gain self-confidence. Biological factors: People who have experienced smoking will experience addiction as a result of the levels of nicotine in their blood. Socio-cultural factors include community habits, economic level, education, and employment (Ma'ruf, 2019) Apart from that, cigarettes are the biggest consumption for the Indonesian population, this is shown by the number of adult smokers in Indonesia which has increased in the last ten years. The 2021 Global Adult Tobacco Survey (GATS) launched by the Ministry of Health, has seen an increase in the number of adult smokers by 8.8 million people, namely from 60.3 million in 2011 to 69.1 million smokers in 2021 (Ripsidasiona, 2022). Socioeconomically, the figures used for household spending on cigarettes are higher than the figures used for shopping for nutritious food. GATS 2021 data records that the average monthly quantity for cigarettes is IDR. 382,091.72 (Ripsidasiona, 2022).

The issue of smoking has resulted in pros and cons among Muslims, differences of opinion in providing legal certainty between *halal*, *makruh* and *haram*. Islamic organizations in Indonesia have also had differences of opinion in providing legal certainty regarding cigarettes and the act of smoking. The debate that arises is because there are no textual provisions in the Koran or al-Hadith regarding the issue of smoking. Several opinions have emerged which say that smoking is legally permissible. There are also those who argue that smoking is *makruh*, and there are also those who say it is *haram* (Auton, 2012). The mass organization that forbids smoking is Muhammadiyah taking into account the many harms contained in cigarettes, as well as electronic cigarettes (e cigarettes) which are *haram*, because electronic cigarettes endanger themselves and other people who are exposed to the vapor as has been agreed by medical experts and academics (PP Muhammadiyah, 2020). Things are different with the mass organization Nahdatul Ulama (NU) through the *Bahtsul Masa'il* Institute (LBM). The NU Executive Board gives smoking three legal statuses, all depending on the situation and conditions: permissible, *makruh*, and *haram*. It is permissible if smoking is considered to have no bad effects or harm, it is *makruh* if smoking is seen to cause harm but is relatively small so it is not strong enough to be used as a "theological basis" for the prohibition of smoking, and then it is *haram* if smoking is seen to bring great harm to oneself (NU Online, 2018). The Indonesian Ulema Council (MUI) also issued a fatwa regarding smoking. The decision made in the plenary session of the Ijtima Ulama of the Indonesian Fatwa Commission III stated that smoking is "prohibited" and is considered *haram* and *makruh*. However, smoking is *haram* in public places, for pregnant women and children (Kemenag Republik Indonesia, 2009). Differences of opinion regarding the legality of smoking are a matter of jurisprudence issued by Muslims who still have not received legal provisions according to state law. Therefore, the author explains again in terms of human rights according to the law in force in Indonesia, so the problem is what is wrong with cigarettes and the problem with human rights according to the law in force in Indonesia.

RESEARCH METHODS

The research method used is the normative juridical method or normative legal research, which is research aimed at finding and formulating legal arguments through analysis of the main problem (Hadjon & Djamiati, 2005). The main problem is the right to health which is part of human rights as a result of smoking. The act of smoking produces smoke which results in the right to health being compromised. Because Indonesia is a country of law, the right to health is guaranteed by law in Indonesia, so that the act or act of smoking is regulated, so that the act of smoking is not carried out arbitrarily. Thus, this normative method is a research method carried out with the main aim of describing or describing a situation objectively in accordance with existing legal norms. Likewise, content analysis is a research technique for drawing conclusions by identifying human rights problems objectively and systematically.

RESULTS AND DISCUSSION

1. Cigarettes and the Right to a Healthy Life

Cigarettes and their actions (smoking) are related to the right to a healthy life, because cigarettes contain chemicals that are harmful to health, including the right to a healthy life. According to research by doctors, there is not a single doctor's research result that states that smoking is healthy, all doctors in the world state that smoking is unhealthy and even endangers the health and life of humankind, resulting in death. There is no need to doubt the dangers of smoking for body health, because various dangerous diseases can be caused by this bad habit (smoking), and not only active smokers, cigarettes are also dangerous for anyone who inhales the smoke or is a passive smoker (Alodokter, 2021). A passive smoker is someone who inhales cigarette smoke from active smokers. Exposure to cigarette smoke can cause serious illness and even death. Passive smokers can be exposed to the same risk of disease as active smokers, including cardiovascular disease, lung cancer, respiratory disease, and the tar content in cigarettes triggers lung irritation and cancer (M. Kurniawan et al., 2021). Various studies have been carried out that the chemical substances contained in cigarettes are very dangerous for health (Alodokter, 2021).

The dangers posed by cigarettes are actually very terrible, because cigarettes contain various kinds of poisons which are very dangerous for human health. Therefore, cigarettes contain ingredients that are harmful to health and result in various diseases, so smokers can act in the name of human rights, but other people also have the same human rights, namely the right to healthy air or the right to live a healthy life. The right to live a healthy life is also a human right, because being healthy is a blessing from Allah that needs to be maintained. Health is a gift from Allah which is the basis for all blessings and all abilities. The pleasure of eating, drinking, sleeping, as well as the ability to move, work and think, will be reduced or even lost with disruption to health. Therefore, we must always be grateful for the blessings of health that Allah has given us by maintaining and even increasing our physical abilities, but people often forget to be grateful even when they are healthy and only realize how good it is to be healthy after they become sick (Saputra, 2020). For people who want a healthy life, smoking is a culture that is not good and unhealthy because it is unethical, however, smokers carry out the act of smoking in the name of human rights. The need for clean and healthy living behavior, which is all health behavior carried out with awareness, so that family or family members can help themselves in the health sector and play an active role in health activities in the community (Karo, 2012). Clean and healthy living behavior is an effort to improve the health status and quality of life of the community. The application of clean and healthy living behavior can be carried out in the family, school, workplace and general community, with the aim of making individuals aware of implementing clean and healthy behavior and can increase public awareness, also according to health standards (Merdekawati et al., 2022). Clean and healthy living behavior to create a healthy environment that forms a healthy physical or body which is the right to a healthy life. This is because health is a state of health both physically, mentally, spiritually and socially which allows everyone to live a productive life socially and economically. Therefore, smoking is not part of the rights, both civil rights and economic, social and cultural rights, and smoking is not a human right, because smoking is everyone's choice. In a choice, there are consequences that must be made, namely respecting other people so that they are not affected by cigarette smoke (Gettari, 2022). As part of human rights, healthy living behavior with a healthy lifestyle is a long-term commitment to maintain or do several things to be able to support bodily functions.

A healthy body needs to be supported by a good and healthy living environment, because a good and healthy environment can influence the development of human life, both directly and indirectly having an impact on human life. Environmental issues are basically everyone's problems and it is appropriate that awareness movements are tried to be built to restore environmental conditions to a better direction. It is imperative that all parties take whatever role they can to repair damage to the surrounding environment

(Arliman S, 2018). Improving the surrounding environment so that it becomes a good and healthy environment, which can be interpreted as a condition where it is free from various diseases and covers all aspects of life around it, including smoke pollution (one of which is cigarette smoke). A good and healthy environment creates emotional and spiritual health, so it is not easy to create good and healthy conditions because there are many things that are interconnected with one another, namely human rights issues. However, a good and healthy environment is a legal subject, so it is necessary to protect the environment itself to obtain environmental justice itself. Thus, ethics are needed that fight for environmental justice and recognition of the dependence between humans and the environment. This is, even though the right to the environment, which is one of the environmental ethics for achieving environmental justice, has not been maximally agreed upon and implemented as a fundamental right that must be recognized politically and legally (Arliman S, 2018). Therefore, the environment is seen as an instrumental variant of the general conception of human rights, namely that humans or citizens have the right to a healthy and clean environment (Usman, 2018). Legally, this means that environmental protection from cigarette smoke is a fundamental aspect of the sustainability and guarantee of human rights such as the right to a healthy life and the right to health through a clean and healthy environment. These universal human rights values are then transformed into legal products to protect the interests of the environment and humans themselves.

2. Protection of the Right to a Healthy Life through International Human Rights Documents

Smoking will produce smoke which has an impact on air pollution, because cigarette smoke is an environmental pollutant that causes environmental pollution. Environmental pollution means that the environment is polluted which is dangerous for human health. A dangerous pollutant from cigarette smoke is CO (Carbon Monoxide) gas. This gas is a poisonous gas that can reduce the blood's ability to carry oxygen. This gas is formed when tobacco and cigarette wrapping paper are burned. This element has the ability to combine very quickly with hemoglobin, as a result the oxygen supply to all body organs is hampered (Mudhofir et al., 2018). Thus, pollutants originating from cigarette smoke pollute and damage human health and life and even destroy humanity. This means that the right to life is disturbed due to pollutants originating from cigarette smoke which also results in disruption to human health.

Protection against the dangers of cigarette smoke is related to human rights issues at the international level, there are several covenants as an effort to protect human health. One of the world organizations under the auspices of the United Nations, namely the World Health Organization (WHO), as the organization that manages human health in the world, has issued the Framework Convention on Tobacco Control (FCTC), which is the first international agreement that regulates public health. The implementation of the Framework Convention on Tobacco Control (FCTC) as an international legal instrument has been in effect since February 27 2005. The convention aims to protect the health of the world community (Kemenekes Republik Indonesia, 2022). Article 8 of the Framework Convention on Tobacco Control (FCTC) explains exposure to secondhand smoke. Scientifically, exposure to cigarette smoke causes death, disease and disability. The participating countries have stipulated in their national laws the obligation to follow and implement effective policies to protect the public as passive smokers from exposure to cigarette smoke in public places and closed workplaces, public transportation and in other public places (Kemenekes Republik Indonesia, 2022). Likewise, Article 12 of the Framework Convention on Tobacco Control (FCTC) encourages participating countries to make policies to increase public awareness about tobacco control through various activities, including: activities to increase public awareness about the dangers of smoking and exposure to cigarette smoke as well as the benefits of quitting smoking; tobacco control training for health workers, social workers, media, educators, policy makers and other related parties (Kemenekes Republik Indonesia, 2022). Cigarette smoke is dangerous for the health of smokers and passive smokers, because when exposed to cigarette smoke, people who do not smoke (passive smokers) will inhale twice the poison contained in cigarette smoke. With so many diseases caused by cigarette smoke, the government needs to make efforts to increase the prevention of smoking bans in public places by making policies regarding smoke-free areas

(Rombang et al., 2022). The aim of the Framework Convention on Tobacco Control (FCTC) is to protect current and future generations from the health, economic, social and environmental impacts caused by consumption and exposure to cigarette smoke.

Next there is the International Covenant on Civil and Political Rights (ICCPR) which is an international human rights document in the field of civil and political rights. The International Covenant on Civil and Political Rights is a multilateral agreement established by the United Nations General Assembly based on Resolution 2200A (XXI) on 16 December 1966. This agreement obligates its member countries to protect the civil and political rights of individuals, including the rights of for life, freedom of religion, freedom of opinion, freedom of assembly, electoral rights, and the right to a fair and impartial trial process (Wikipedia, 2022). The document is a declaration that sets out general principles of human rights, and a convention or treaty that contains binding commitments. These civil and political rights originate from the inherent dignity and worth of every human being. This is in accordance with the Universal Declaration of Human Rights, the ideal of free human beings to enjoy civil and political freedoms and freedom from fear and poverty. This can only be achieved if conditions are created where everyone can enjoy civil and political rights as well as economic, social and cultural rights (Elsam, 2022). Article 6 paragraph (1) of the International Covenant on Civil and Political Rights (ICCPR) states that, “every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life”. Based on this article, it is determined that everyone has the right to live (the right to live) and no one, not even the state, can arbitrarily stop someone’s life. This means that the state must take various actions to protect human life. One of them is action to stop environmental pollution resulting from cigarette smoke pollutants.

Along with the International Covenant on Civil and Political Rights (ICCPR) there is the International Covenant on Economic, Social and Cultural Rights (abbreviated as ICESCR). This covenant is a multilateral agreement established by the United Nations General Assembly on 16 December 1966 and came into force on 3 January 1976. The rights guaranteed in this covenant are the right to health, the right to education and the right to a decent life. Article 11 paragraph (1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) states, “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions....” This right includes getting a clean living environment (Genungten, 1999) which can be divided into the right to life, the right to a decent life, the right to health. The meaning of this verse shows that everyone has the right to live and no one, including the state, can arbitrarily terminate a person’s life. The state must take action or at least protect human life due to environmental pollution originating from cigarette smoke pollutants.

The 1948 Universal Declaration of Human Rights, hereinafter referred to as the 1948 Declaration, is the first universal international human rights document. This right applies to all humans regardless of language, race, ethnicity, religion and a person’s position in society. In its development, this international instrument in the form of the Universal Declaration of Human Rights 1948 (UDHR) has been transformed into a source of law (Sinombor, 2022). The purpose of this declaration is to protect every individual throughout the country. Article 25 paragraph (1) of the Universal Declaration of Human Rights 1948 regulates “everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control”. The meaning of the right to a healthy life is to get a life that is adequate for the health, that is, every person has the right to a healthy life that must be free from environmental pollution (clean air). To have a healthy life, of course you have to be free from air pollution that comes from cigarette smoke pollutants.

Next there is the African Charter on Human Rights and Population Rights or also known as the African

Charter or Banjul Charter which was established by the organization of African countries (The Organization of African Unity / OAU) on June 27 1981. African Charter on Human and Peoples' Rights is an international human rights instrument aimed at protecting human rights and fundamental freedoms on the African continent (Wikipedia, 2022). African Charter on human and peoples' rights, which serves as the first legally binding human rights treaty (Kaluku & Kuhe, 2020). The African Charter also regulates all people which shows that all African nations, including every individual, namely every nation and every individual have the right to a pleasant living environment that is free from air pollution. Article 16 paragraph (1) of the African Charter explains "every individual shall have the right to enjoy the best attainable state of physical and mental health". Therefore, a clean and healthy living environment is called adequate living conditions that are free from air pollution, including air pollution due to cigarette smoke pollutants.

The same thing is also regulated in the Stockholm Declaration of the United Nations Conference on the Human Environment or known as the 1972 Stockholm Declaration. Principle 1 of the 1972 Stockholm Declaration is "man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations", namely regulating everyone's right to healthy living conditions, including a healthy and clean environment. The importance of fulfilling this right in the Stockholm Declaration is the protection of the environment. This is because humans are part of life by enjoying a clean, healthy environment and free from damage and pollution, including air pollution from cigarette smoke.

3. Protection of the Right to a Healthy Life According to the Indonesian Legal System

The right to a healthy life is constitutionally guaranteed, because the 1945 Constitution provides basic guarantees. Chapter XA regulates human rights, while the right to a healthy life is contained in Article 28H paragraph (1) which states that "every person has the right to live in physical and spiritual prosperity, to live in a place and to have a good and healthy living environment and has the right to receive health services". Article 28H paragraph (1) shows that the 1945 Constitution adheres to the notion of environmental sovereignty (ecocracy or ecological power). Humans as a component of the environment have a big role, so that human rights issues get the first portion (Sodikin, 2019). One implementation of Article 28H paragraph (1) of the 1945 Constitution is Law Number 39 of 1999 concerning Human Rights. Article 9 of Law Number 39 of 1999 explains the right to life, namely, paragraph (1) everyone has the right to live, maintain life and improve their standard of living; paragraph (2) everyone has the right to peace, security, peace, happiness, physical and spiritual prosperity; and paragraph (3) everyone has the right to a good and healthy living environment. This article explains that health is the basis for recognizing the level of humanity, if health is disturbed, a person becomes conditionally unequal. If health is disturbed, a person will not be able to obtain their other rights, so that someone who is unhealthy will naturally have their right to life reduced (Ardinata, 2020). The state must guarantee that every citizen lives healthily, and requires its citizens to live healthily. Therefore, there is a need for a physical environment such as clean water, clean air, a healthy workplace and others that can contribute to creating a healthy environment that allows citizens to live healthy naturally.

Furthermore, Law Number 32 of 2009 concerning Environmental Protection and Management, especially in Article 65 paragraph (1) which states that: "every person has the right to a good and healthy living environment as part of human rights". This article conveys the meaning that understanding and recognizing human rights also means protecting the environment and can be used to achieve sustainable development. Recognizing and protecting human rights is a potential way to protect the environment. This was also said by Gede Yusa and Hermanto (2018), environmental development is an integral part of the right to the environment and reflects wise and wise attitudes of humans whose effectiveness is considered necessary to

be studied. Within the framework of the Green Constitution, which should support the creation of sustainable development, the role of the state can be to guarantee the constitutional rights of citizens to a sustainable environment (Yusa & Hermanto, 2018). The right to a good and healthy living environment is part of human rights related to sustainable development. A good and healthy living environment is one of the elements that must be present in sustainable development which is not only intended for the current generation but for future generations. This means that the right to a healthy life for present and future generations must be free from the threat of environmental pollution that comes from air pollution.

Law Number 17 of 2023 concerning Health also firmly provides detailed health regulations including the right to live a healthy life and be free from air pollution. Article 1 number 1 of Law Number 17 of 2023 concerning Health states that health is a person's healthy condition, both physically, mentally and socially and not just being free from disease to enable him to live a productive life. Likewise, Article 4 paragraph (1) letter g of Law Number 17 of 2023 states, "every person has the right to a healthy environment for achieving a degree of health". Based on these provisions, it means that health includes physical, mental, spiritual and social health, or in other words, the definition of health is interpreted broadly, that is, it is not just physical health, but the right to health must be interpreted as the right to health physically, mentally, spiritual, and social (Affandi, 2019). This means that health is the basis for recognizing the level of humanity, because without health people will not be able to obtain other rights, for example a reduction in the right to life means not being able to get a decent job. Therefore, every activity and effort to improve the highest level of public health is very important for the formation of human resources, increasing resilience and competitiveness, as well as overall national development. To improve the level of public health as high as possible by controlling the distribution of tobacco. Thus, safeguarding the use of materials containing addictive substances is directed so that they do not disturb and endanger the health of individuals, families, communities and the environment. This is because products containing tobacco, solid, liquid and gas are addictive and the use of which can cause harm to themselves and/or the surrounding community. Every person who produces or imports cigarettes into Indonesian territory is required to include a health warning. The government together with the community guarantees the availability of a healthy environment that does not pose a negative risk to health. A healthy environment is free from elements that cause health problems such as polluted air caused by cigarette smoke. Thus, everyone is obliged to respect the rights of others in an effort to obtain a healthy environment, and everyone is obliged to behave in a healthy lifestyle to realize and maintain the highest health.

As explained above, the Framework Convention on Tobacco Control (FCTC) is an international agreement designed by the World Health Organization (WHO) to establish global rules for tobacco control in the world with the aim of protecting present and future generations. from the health, economic, social and environmental impacts caused by consumption and exposure to cigarette smoke. In Indonesia, this convention should be followed up with ratification which produces a law regulating the control of tobacco distribution, but until now the Indonesian government has not been able to ratify the convention and the Indonesian government has not even signed the agreement. This is despite the fact that there is Law of the Republic of Indonesia Number 11 of 2005 concerning Ratification of the International Convention Concerning Economic, Social and Cultural Rights. The main contents of the International Covenant on Economic, Social and Cultural Rights as stated in Law Number 11 of 2005 are, "the right of every person to enjoy the highest attainable standard of physical and mental health". This provision shows that the contracting states are obliged to respect, protect and fulfill human rights. In relation to the act of smoking, there are those who state that smoking is a right, so smokers have the right to smoke, but smoking is not a human right, because there are people who do not smoke who have the right to breathe clean and healthy air. Thus, there is a higher right than smoking, namely a person's right to clean air and a healthy life (Khambali, 2019).

The need for ratification of the tobacco control convention (Framework Convention on Tobacco

Control/FCTC) is necessary to strengthen a strong legal basis for regulating further implementation of control of tobacco products and their impact on public health (F. Kurniawan, 2020). The legal basis for overcoming and controlling tobacco is Government Regulation Number 109 of 2012 concerning Safeguarding of Materials Containing Addictive Substances in the Form of Tobacco Products for Health. Technical regulations as a legal basis for controlling tobacco distribution are regulated by Government Regulation (PP) Number 109 of 2012 concerning Safeguarding of Materials Containing Addictive Substances in the Form of Tobacco Products for Health.

Regarding health problems and a polluted environment resulting from cigarette smoke, Article 2 paragraph (1) of Government Regulation Number 109 of 2012 states that, “the implementation of security measures for the use of substances containing addictive substances in the form of tobacco products for health is directed so as not to disturb and endanger individual health, family, community and environment”. Likewise, the general explanation of the Government Regulation explains the impact of cigarette smoke, namely: “the negative impact of tobacco use on health has long been known, and lung cancer is the number one cause of death in the world, besides being able to cause heart attacks, impotence, disease. blood, emphysema, stroke, and pregnancy and fetal disorders that can actually be prevented. Smoking is detrimental to the health of both the smoker himself and other people around him who do not smoke (passive smoke). Smokers have a 2-4 times higher risk of developing coronary heart disease and a higher risk of sudden death.” Thus, dangerous addictive substances contained in cigarettes such as carbon monoxide, nicotine, acetic acid, naptalin, formalin, hydrogen cyanide, geranol, TAR, methanol, pyridine, methyl chloride, toluene, cinnamaldehyde are dangerous for humans, which cause dependence on who consumes it (Khambali, 2019). The right to healthy and clean air is not obtained because smoking has a negative impact on the health of the smoker himself (active smoker) and also for other people around him (passive smoker). Passive smokers are forced to inhale cigarette smoke, so passive smokers are people who are not smokers but are forced to inhale or inhale cigarette smoke emitted by active smokers (people who smoke).

The government is responsible for fulfilling, protecting and respecting human rights, especially the right to a good and healthy environment. Article 6 of Government Regulation (PP) Number 109 of 2012 concerning Securing Materials Containing Addictive Substances in the Form of Tobacco Products for Health states that, paragraph (1) the Government and Regional Governments in accordance with their authority are responsible for regulating, organizing, developing and supervising the safeguarding of materials containing Addictive substances in the form of tobacco products for health, and paragraph (2) the Government and Regional Governments are responsible for providing access to information and education regarding the safeguarding of materials containing addictive substances in the form of tobacco products for health. As a form of government accountability, especially regional governments, in fulfilling, protecting and respecting human rights, regional governments make regional regulations in order to fulfill, protect and respect human rights, especially the right to a good and healthy living environment.

Law Number 23 of 2014 concerning Regional Government regulates that the administration of regional government is directed at accelerating the realization of community welfare through improving services, empowerment and community participation, as well as increasing regional competitiveness by paying attention to the principles of democracy, equality and justice. Therefore, regional governments are given authority in the form of “concurrent government affairs which are handed over to the regions as the basis for implementing regional autonomy” (Article 9 paragraph (4) of Law Number 23 of 2014). These concurrent government affairs are mandatory government affairs related to basic services and mandatory government affairs that are not related to basic services. Mandatory government affairs relating to basic services include health, community protection and social issues (Article 12 paragraph (1) of Law Number 23 of 2014). Mandatory government affairs that are not related to services include the environment (Article 12 paragraph (2) Law Number 23 of 2014). The provisions of Law Number 23 of 2014 are a mandate for regional governments to manage their own households. There are two sources for managing one’s own household,

namely autonomy and assistance duties (*medebewind*), so that regional regulations also consist of regulations in the field of autonomy and regional regulations in the field of assistance tasks (Bidja, 2021). Thus, regional regulations in the field of autonomy are regional regulations that originate from attribution. Law Number 23 of 2014 and regional regulations in the field of assistance tasks are regional regulations that originate from delegation or assignment authority. Therefore, Law Number 17 of 2023 concerning Health requires the government and every regional government to create smoking-free areas.

The provisions in Law Number 23 of 2014 concerning Regional Government and Law Number 17 of 2023 concerning Health are the legal basis for regional governments to form regional regulations to tackle cigarette smoke pollution. The existence of regional regulations is a necessity (*conditio sine qua non*) in implementing regional autonomy. Regional regulations are recognized as a form of statutory regulation in Indonesia. Regional regulations are intended to implement higher legal regulations and accommodate the special conditions of the area concerned (Santoso, 2014). The provincial and district governments have actually made regional regulations in order to overcome the dangers of cigarette smoke. In general, these regional regulations are known as Regional Regulations on Non-Smoking Areas (KTR). The reasons for implementing KTR are, (1) everyone has the right to protection against the dangers of smoking, (2) tobacco smoke is dangerous and has no safe limits, (3) special rooms for smoking and air circulation systems are unable to provide effective protection, so protection is only effective if a place is 100% free from cigarette smoke (Hasibuan & Harahap, 2019).

Regional regulations made by provincial and district governments are generally the same, namely in order to improve the level of public health, both physical, mental, spiritual and social for everyone to live socially and economically productive lives. This requires everyone's awareness, willingness and ability to get used to a healthy lifestyle. Improving the highest level of public health means that the government is obliged to carry out integrated and comprehensive health efforts, both in the form of disease prevention, health improvement, disease treatment and health restoration activities. This health restoration problem is related to the protection of addictive substances, especially those related to tobacco and products containing tobacco (cigarettes) as well as people who smoke because smoking is not an activity that is completely prohibited by law. Within the framework of recognizing, realizing and protecting the right to health of citizens, regional regulations made by regional governments lay down the basic principles of technical regulation. Technical regulations prioritize the protection of passive smokers from other people's cigarette smoke (active smokers), and reducing or even stopping the smoking activity of active smokers. Because active smokers want to continue smoking with their habit and they even act in the name of human rights (smokers' rights), there are two aspects of the government's obligation to establish policies to protect passive smokers and to encourage the reduction or even cessation of smoking activities for active smokers. On the other hand, there is an obligation for active smokers to respect the health rights of other people who do not smoke, namely by ensuring that their cigarette smoke does not cause health problems for other people (passive smokers).

CONCLUSION

The issue of cigarettes, smokers and the act of smoking is understood as a human right, because for smokers, the act of smoking is a pleasure in itself and other people must not prohibit it. People smoking anywhere and anytime is a human right. According to smokers, smoking is not prohibited by law at all, even though cigarette smoke is very dangerous for the environment and human health. The activity of smoking does not only talk about the enjoyment of a person or group of people who smoke cigarettes at will, but there are rights of other people who feel disturbed by the act or activity of smoking. The results of research conducted by health experts have stated that smoking is a habit that can harm human health and the environment, therefore there needs to be protection for human health and the environment. Protection of human health and the environment is regulated in several human rights documents, both at the international and national levels, even in regulations made by regional governments. This form of protection is a form of

state based on law, and the law must be the basis for carrying out activities, including smoking activities.

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