
Legal Protection Effort Against Children In Sale And Purchase Of Cigarettes In Gorontalo Utara Regensy

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ABSTRACT

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The current research aims at finding out efforts performed to provide legal protection to children in the sale and purchase of cigarettes in the Gorontalo Utara Regency. In addition, the research notifies the inhibiting factors during the provision of legal protection to children in the sale and purchase of cigarettes. The research applies empirical legal research with qualitative descriptive analysis technique. The data used are empirical and secondary data in which are collected by using techniques of interview and observation. The research finding reveals that there are two efforts of legal protection to children in the sale and purchase of cigarettes, namely cigarettes sales ban to the children and specific protection. In the meantime, the inhibiting factors during the provision of legal protection to children in the sale and purchase of cigarettes are ineffectiveness of regulation, lack of knowledge on the law, absence of counseling and supervision from the government, and ineffectiveness of existing programs.

1. Introduction

Article 1 number 1 of Government Regulation Number 109 of 2012 concerning the Securing Materials Containing Addictive Substances in the Form of Tobacco Products for Health describes addictive substances as: "Substances that endanger health characterized by changes in behavior, cognitive, and physiological phenomena, a strong desire to consume these materials, difficulty in controlling its use, providing priority to the use of the substance over other activities, increasing tolerance and can cause withdrawal symptoms."

In the business world, cigarettes are intended only for adults and there is the freedom to choose between smoking or not. However, the more advanced modernization, making cigarette connoisseurs not only among adults. Cigarettes are increasingly considered the most important form of modern lifestyle, making them increasingly favored by various groups, ranging from children to the elderly.¹ This makes cigarette users not decrease but on the contrary, namely increasing.

North Gorontalo is one of the regencies in Gorontalo province which has a high prevalence compared to other regencies.

Table. 1.1 data on child smokers in North Gorontalo Regency in 2018

Number of smokers	Smokers aged 10-19 years	Age of first smoking	
		10-14 years old	15-19 years old
30.43%	15.74%	25.54%	52.67%

Source: Basic Health research in 2018

Article 3 of Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Legal Protection explains that child protection is carried out solely with the aim that children's rights to live, grow, develop and participate can be guaranteed. In addition, to create quality, moral, and prosperity Indonesian children, children must receive protection from all forms of violence and discrimination. The aims described in the article are related to the position of the child as the next generation in the life of the nation and state.² Every child

¹ Jilly B. Mandey, 2013, *Promosi, Distribusi, Harga Pengaruhnya Terhadap Keputusan Pembeli Rokok Surya Promild*, Jurnal EMBA Vol. 1, No. 4, hal.96.

² Amin Suprihatini, 2008, *Perlindungan Terhadap Anak*, Penerbita Cempaka putih, Klaten, hal. 14.

has the right to love, care, and protection from parents, family, society, and the state for their physical and mental growth as well as personal development.³

Legal protection for children is all efforts and actions of all elements of society from various kinds of duties and authorities who understand and know the importance of the position of children for the future of the nation. ⁴ The obligations of all elements in carrying out legal protection for children from all actions that can inhibit and damage children's growth and development have been stated in 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."⁵

The rise of smokers among children today is of course always a concern for those around them. Parents certainly do not want their children to smoke because they are aware of the dangers of smoking. However, as long as their children are not within the range of parental supervision, it will be easy for children to be influenced by their playing environment and fall into smoking behavior. Protection of children from the dangers of smoking is difficult to maintain if only one element performs a protective effort. As mentioned in the previous regulation, it is not only parents who are obliged to protect children from actions that endanger their health, but both central and regional governments to the society have the same obligation and take protective efforts.

The reason why children smoke is not only influenced by their social environment, but access to cigarettes is also an incentive for children to continue smoking. From the results of research conducted by Riantina and Eko Maulana, one of the traders' tricks to make cigarettes sellable in the market is to allow them to sell at retail because the prices are more affordable so school children can afford to buy these cigarettes.⁶ Government Regulation Number 109 of 2012 concerning Securing Materials Containing Addictive Substances in the form of Tobacco Products for Health was issued to control the circulation of tobacco products in the form of cigarettes so as not to interfere with public health, especially among children. Article 2 paragraph (2) of this regulation also explains that the aim of securing materials containing addictive substances in the form of tobacco products is to protect the health of everyone, individuals, families,

³ Lusiana M. Tijow, 2017, *Perlindungan Hukum bagi Perempuan Korban Janji Kawin*, Inteligencia Media, Malang, hal.85-88

⁴ Nico Poltak, 2014, *Perlindungan Hukum Terhadap Anak Sebagai Korban Tindak Pidana Perdagangan Anak*, Skirpsi, Fakultas Hukum Universitas Sriwijaya, hal. 17.

⁵ Undang-Undang Nomor 35 tahun 2014 tentang perubahan atas Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak.

⁶ Rianti Luxiarti dan Eko Maulana Syaputra, 2016, *Hubungan antara Sikap tentang Etika Promosi terhadap Niat dan Perilaku Penjual Rokok*, Jurnal Kesehatan Masyarakat, Vol.5, No.2, hal.73

societies, and the environment from the dangers of addictive substances, protect the population of productive age, children, adolescents, and pregnant women from environmental incentives and the influence of advertising/promotion of tobacco products, as well as increasing public awareness and vigilance about the dangers of smoking.

To reduce the number of smokers among children, the government makes various efforts. In article 25 Government Regulations Number 109 of 2012 concerning Securing Materials Containing Addictive Substances in the form of Tobacco Products for Health, it is stated that everyone is prohibited from selling cigarettes using self-service machines, to children under the age of 18 and pregnant women.

However, the reality that is still happening in today's society is the opposite. The number of child smokers who were still relatively high and their ease of getting cigarettes were still widely found in society. This provided us an overview that the regulations issued today are still not working well. For this reason, it is necessary to protect children so that they can be free from the dangers of smoking. Seriousness and high attention from the government and the society is needed to be able to reduce the prevalence of smoking children as well as children from cigarette circulation.

Therefore, this article explores the following research questions; What are the efforts to provide legal protection for children against the sale and purchase of cigarettes in the North Gorontalo Regency and what are the factors that inhibit efforts to provide legal protection for children against the sale and purchase of cigarettes in the North Gorontalo Regency?

2. Method

The type of research used in this study was an empirical legal research type, namely analyzing the application of law that occurs in the field supported by direct data from the research location. Sources of data were obtained by the method of observation and direct interviews with resource persons in the field. The analytical method used in processing the data used the descriptive data analysis technique which aims to provide an overview of the data obtained from the research location with a qualitative analysis approach.

3. Discussion

3.1. The Efforts to Provide Legal Protection for Children in Sale and Purchase of Cigarettes in the North Gorontalo Regency

Legal protection is an effort to protect human rights from losses caused by other people and this protection is provided to provide opportunities for society to enjoy the rights that have been granted by law.⁷

Legal protection can be divided into two types, namely:⁸ Preventive legal protection, which is protection provided by the government to prevent violations before the occurrence of violations, and Repressive legal protection, which is final protection in the form of sanctions in the form of fines, imprisonment, and or additional penalties given if a dispute has occurred or a violation has been committed.

Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection explains that "Child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop, and participate optimally in accordance with human dignity and protection from violence and discrimination." The existence of human rights (HAM) will not have any meaning if it is not followed up with the law that regulates the relationship of these rights, meaning that it is the law that formalizes human rights into a set of rules to maintain and protect so that they do not become clashes in the life of society and the state.⁹ Protect basic rights or human dignity, especially for justice seekers.¹⁰

Article 1 number 1 in the Child Protection Law defines a child as someone who is not eighteen years old yet, including children who are still in the womb. Children are a gift from God that must be protected because children are God's creations who have value, dignity, and rights like other human beings.

Children are said to have not been able to protect or provide protection for themselves from things that have bad consequences for their mental, physical, or social. Because of this disability, help from other people is urgently needed to protect children.¹¹

Protection of children also applies to the health of the child, as stated in Article 45B paragraphs (1) and (2) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection which explains that the government, local governments, society, and parents should protect children from actions that can interfere with the child's health. One of the activities that

⁷Tri Astuti Handayani, tth, *Mewujudkan Keadilan Gender Melalui Perlindungan Hukum Terhadap Perempuan*, Jurnal Rechtsstaat Nieuw Vol.1, No.1, hal. 23

⁸<https://elibrary.unikom.ac.id/id/eprint/1382/8/BAB%20II.pdf>, diakses pada tanggal 25 september 2021 pukul 17.44 WITA.

⁹Tijow, Lusiana. *Perlindungan Hak Asasi Manusia Terhadap Hak Hidup Anak Dalam Kandungan Di Luar Pbrkawinan Yang Sah*. Jurnal Legalitas 3 (2), 80

¹⁰ Dian Ekawaty Ismail. (2009). "Upaya Perlindungan Hak-Hak Tersangka/Terdakwa Melalui Mekanisme Praperadilan di Kota Gorontalo." Jurnal Mimbar Hukum. 21 (1) Februari, 85

¹¹ Maidin Gultom, 2012, *Perlindungan Hukum Terhadap Anak dan Perempuan*, PT. Refika Aditama, Bandung, hal.69.

can interfere with the health and growth and development of children is the cigarette.

Government Regulation Number 109 of 2012 concerning securing materials containing addictive substances in the form of tobacco products for health explains that cigarettes are one of the products intended to be burned and sucked and/or inhaled the smoke, including clove cigarettes, white cigarettes, cigars, or other forms produced from the *Nicotiana Tabacum*, *Nicotiana Rustica* plants and other species or their synthetics whose fumes contain nicotine and tar, with or without additive materials.

Cigarettes are divided into four types, namely cigarettes based on packaging (*klobot*, *kawung*, and cigars), cigarettes based on their contents (white cigarettes, clove cigarettes, and *klembak* cigarettes), cigarettes based on the method of manufacture (milled clove cigarettes and machine clove cigarettes), and cigarettes based on filter usage (filtered and non-filtered cigarettes).¹² One cigarette contains nicotine, carbon monoxide gas, nitrogen oxides, hydrogen cyanide, ammonia, acrolein, acetylene, benzaldehyde, urethane, benzene, methanol, coumarin, 4-ethyl catechol, orthocresol, and perylene as well as 85% of gas components.¹³

Nicotine that enters the body will cause respiratory tract disorders and block blood circulation. As a result, it will cause various diseases ranging from heart attacks to cancer. Meanwhile, tar content will cause teeth to turn yellow and accelerate skin aging.¹⁴

In terms of circulation, article 25 of this government regulation states that "Everyone is prohibited from selling tobacco products: (a) using self-service machines; (b) to children under the age of 18 (eighteen) years, and; (c) to pregnant women."

In terms of circulation, article 25 of the government regulation prohibits anyone from selling cigarettes to children who are not eighteen years old yet. The prohibition in this regulation should be the most important form of protection for children from the dangers of smoking. Restrictions on children's access to sell and purchase cigarettes have been emphasized in the article and this can be used as an effort to reduce the prevalence of child smokers. However, incidences in the field were not the same as what was expected in each regulation.

The results of interviews with business actors said that currently many children came to purchase cigarettes at their stalls, either during school hours or when

¹² Muhammad Jaya, 2009, *Pembunuh Berbahaya Itu Bernama Rokok*, Yogyakarta, Riz'ma, hal.15

¹³ Giyadi Adi, 2017, *Pecandu Rokok*, Relasi Inti Media, Yogyakarta, hal.3.

¹⁴ Teddie Sukmana, 2009, *Mengenal Rokok dan Bahayanya*, Be Champion, Jakarta, hal.7

they came home from school. Child smokers are no longer taboo in the environment where they sell and this makes these business actors without hesitation give cigarettes to children who come to purchase cigarettes. It's different with business actors who are located not far from the school, said that currently, many junior high school children came to buy cigarettes because too often they got a buyer for a child, making them without hesitation gave cigarettes to these children. Some revealed that cigarettes were one of the merchandise in the stalls that were often bought by both adults and children.

Information regarding the prohibition of selling cigarettes to children is listed on the side of the packaging of the tobacco product and this proved that the business actors were carrying out their obligations as stated in the packaging of their merchandise. However, even though there is information regarding the prohibition of selling cigarettes to children, this does not make these business actors carry out what was stated in the statement in their merchandise.

Another form of protection that is specifically given to children is described in article 41 of this Government Regulation which states that the protection is carried out in an integrated and comprehensive manner through prevention, restoration of physical and mental health as well as social activities.¹⁵ This form of prevention aims to give children a better understanding of how dangerous cigarettes are and how bad it is for their bodies.¹⁶

The Department of Public Health carried out efforts to protect children using prevention through an effort called Health promotion because it is deemed necessary for children to socialize regarding what smoking is and the dangers of smoking itself for children's health. The socialization was carried out with various programs, starting from the UKS (School health) program, counseling in schools, counseling on adolescent care health services (PKPR), and adolescent posyandu (integrated service post).

In addition, the Department of Public Health has also issued a regional regulation on Non-Smoking Areas in 2020. However, the promotion and implementation of this regulation have not been implemented due to the obstruction of COVID-19. However, this Regional regulation on Non-Smoking Areas (KTR) in North Gorontalo Regency has not accommodated the prohibition of selling cigarettes to children. The prevention efforts carried out by the government must also be accompanied by restrictions on children's access to cigarettes.

Meanwhile, the PPPA (Women Empowerment and Child Protection) Department of North Gorontalo Regency revealed that the form of protection provided by the PPPA Department was in the form of counseling or socialization regarding the dangers of cigarettes to children. In addition, the PPPA

¹⁵ Peraturan Pemerintah Nomor 109 Tahun 2012 tentang Pengamanan Bahan yang Mengandung Zat Adiktif berupa Produk Tembakau bagi Kesehatan.

¹⁶ *ibid.*

Department also conducted socialization in villages if there is a request for the Women Empowerment and Child Protection Department to go directly to the villages. The socialization carried out was not always specifically related to smoking and children.

Some of the efforts described earlier can be seen that there were two forms of legal protection for children against selling and purchasing cigarettes, namely in terms of circulation in the form of prohibiting the sale of cigarettes to children and also in terms of special protection, namely conduct health promotion or counseling. The provision of protection is essentially carried out by all parties, both by the government, society, and the parents of the child. The prohibition of selling cigarettes to children is one of the protection efforts that can be given by the central and local governments, society, and parents so that the child does not easily get cigarettes and can avoid the adverse effects of smoking. However, in the field, this was not the case. Current sales of cigarettes to children by business actors indicated that both the government and society, in general, were still unable to carry out what was mandated by the laws and regulations, namely prohibiting the sale of cigarettes to children.

The Department of Public Health and Women Empowerment and Child Protection, which are the governing bodies of local government affairs, should have made all efforts to prohibit the sale of cigarettes to children. The Department of Public Health and Women Empowerment and Child Protection does not only protect in terms of socialization or counseling regarding the dangers of smoking but there must be an effort that directly leads to the implementation of the prohibition of selling cigarettes to children. It would be even better if this socialization or counseling also involved regulations regarding the prohibition of selling cigarettes to children in society. Cross-sectoral cooperation can also be carried out to carry out protection efforts in terms of the prohibition of selling cigarettes so that they can be maximized.

The Non-Smoking Area and the prohibition of selling cigarettes to children should always go hand in hand because there would be less implementation of the Non-Smoking Area if the circulation of cigarettes in the society is still not controlled and can be accessed by children. Non-Smoking Areas are carried out to protect the general public from the adverse effects of cigarettes, either directly or indirectly. Protecting society from the adverse effects of cigarettes is not only done with prevention such as socialization or counseling but controlling its circulation is also one of the most important things in protecting from the dangers of smoking, especially among children.

3.2. The Factors inhibiting legal protection for children against sell and purchasing cigarettes in the North Gorontalo Regency

1. Rule of law that Didn't Work

Article 25 of government regulation number 109 of 2012 concerning securing materials containing addictive substances in the form of tobacco products for health prohibits anyone from selling cigarettes to children who are not 18 years old yet. However, in reality, this regulation didn't work in the field and business actors could still be found selling cigarettes to children who came to buy.

In addition, the shortcoming of this prohibition rule is that there were no consequences for people who violate the rule. In fact, for this rule to be obeyed by society, it must contain consequences or sanctions so that society is more obedient.

2. There was no counseling and supervision

The Department of Public Health does didn't make special efforts to sell and purchase cigarettes. Efforts that could be done were limited to socialization regarding the dangers of smoking. The responsibility for how children get cigarettes is returned to the parents and people around the child because they are the ones who know the daily life of the child. The efforts made by the Department of Public Health also aim to provide an understanding of the dangers of smoking to people around children so that they can directly protect the child.

It is the same with the women empowerment and child protection department which said that the authority to deal with the problem of how children get cigarettes is returned to the parents because currently, the PPPA department will only deal with children's problems that are classified as serious.

Good cooperation from the government, society, and parents must always go hand in hand because if you give responsibility for protecting children from selling and purchasing cigarettes only to parents, it will not be enough. After all, parents only know how their children behave at home or in their home environment. Parents do not know the activities their children do at school or playground.

3. Lack of legal understanding

From the results of interviews with business actors, it was found that the cause of them selling cigarettes to children was because they did not know that rules were prohibiting the sale of cigarettes to children. They even revealed that while selling cigarettes to children, they were not aware of any regulations prohibiting selling cigarettes to children.

There was also someone who said that he didn't care about the children who came to purchase cigarettes because he thought that as long as cigarettes are still being produced, there is no prohibition for him to continue selling his

merchandise to anyone, including children. During the trade, he admitted that he was not aware of any regulations regarding the prohibition of selling cigarettes to children.

Business actors who didn't understand the law regarding the prohibition of selling cigarettes to children could be one of the supporting factors why children can easily get cigarettes. If business actors understand and apply what was stipulated by the laws and regulations, then business actors can protect children in buying and selling cigarettes.

Counseling or socialization carried out by the Department of Public Health and PPPA should not only focus on preventing children from the dangers of smoking but should also provide counseling and understanding, especially to business actors regarding the rights and obligations of business actors to protect children from the dangers of smoking. This is because business actors are the people who take part in increasing child smokers. After all, child smokers will come face to face with business actors when they need cigarettes then the provision of knowledge about the dangers of smoking and regulations related to cigarettes also need to be carried out for business actors so that they can raise business actors' awareness about the adverse effects of smoking for children.

4. Ineffective Health Promotion

The local government of North Gorontalo Regency, in this case, the Department of Public Health and the Women Empowerment and Child Protection, already has several programs in the field of health promotion. This was most commonly done by the Department of Public Health and the PPPA so far in the form of counseling regarding the dangers and impacts of smoking on health, both in general and specifically to children. However, the activities carried out by the Department of Public Health and PPPA have not worked yet intensely and routinely.

Similarly, the socialization of smoking prevention was conducted by the Women Empowerment and Child Protection Department. From the results of the interview, it was found that the socialization program carried out was not a priority program in the field of child protection. The child protection sector carried out socialization regarding smoking prevention in children only when they received a request to join or coordinate with a sector or organization that required an opinion or contribution from the PPPA Department on how to protect children from harm.

This made the researcher think that what has been done by the PPPA Department was inconsistent and the protection of children from the dangers of smoking was not a priority for the child protection sector.

5. Low public awareness

Publics are parties who are close to children and also have a responsibility in protecting children. It seems that what is described in Article 53 paragraph (1) of Government Regulation Number 109 of 2012 states that, "The public can participate in the framework of securing materials containing addictive substances in the form of tobacco products for health to achieve optimal health degrees."¹⁷

However, the public's concern for children who smoke was still low. The human resource factor was one of the inhibiting factors.¹⁸ People assume that cigarettes are commonplace and will always exist in society. So, protecting children to prevent them from smoking is futile. This can be seen from several business actors interviewed who admitted that while selling cigarettes to children they had never received a warning from any party.

The rules regarding the prohibition of the sale of cigarettes to children and also other preventions against children who smoke were sole to protect the child from activities that could interfere with their health. For this reason, awareness and knowledge of all existing laws are very much needed. The current regulations were made with the sole purpose of protecting the entire society, after arriving in society, how is the awareness of the society itself that will carry out the mandate of each existing law.

4. Conclusion

Legal protection efforts for children in the sale and purchase of cigarettes are divided into two forms, namely prohibition of sales and special protection. This prohibition is in accordance with Article 25 Government Regulation Number 109 of 2012 concerning Securing Materials Containing Addictive Substances in the form of Tobacco Products for Health, it turned out that in the field there was still not there both from the Department of Public Health or the Women Empowerment and Child Protection. Meanwhile, special protection provided by the Department of Public Health and the Women Empowerment and Child Protection was in the form of health promotion or counseling. Obstacles in providing legal protection for children in selling and purchasing cigarettes, namely, legal rules that didn't work, there were no counseling and supervision regarding the rules regarding the prohibition of selling cigarettes to children, lack of legal understanding regarding the prohibition of selling cigarettes to children, ineffective health promotion, and low public awareness.

¹⁷ Peraturan Pemerintah Nomor 109 tahun 2012 tentang Pengamanan Bahan yang Mengandung Zat Adiktif berupa Produk Tembakau bagi Kesehatan.

¹⁸ Retno R.S, Fence M.W, Lusiana M.T., 2020, *Penegakan Hukum Terhadap Tindak Pidana Money Politic Oleh Calon Anggota Legislatif Pada Pemilihan Umum 2019*, VOL. 13, No. 1, hal. 65.

Urgent steps are needed or there is development as well as more and serious attention from both the government and the society so that children can get protection from the circulation of cigarettes in the society. In addition, if the Department of Public Health and the PPPA of North Gorontalo Regency also made special real efforts in handling or organizing the security of materials containing addictive substances in the form of tobacco products in the society to minimize access for children to get cigarettes. For existing prevention efforts, it is hoped that in the future its implementation will be more optimized and carried out as regularly as possible and can reach all levels of society.

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