

CONTROVERSIAL ON TOBACCO EXCISE AS A HEALTH GUARANTEE SUPPORT WITH HUMAN RIGHTS PERSPECTIVE DURING COVID-19

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ABSTRACT

This paper explains the author's view of the state-used tobacco product excise revenue to cover the budget deficit for national health insurance. Furthermore, this is with the perspective of human rights and the fulfillment of health rights during the COVID-19 pandemic. The research method used is juridical normative or doctrinal research, which raises legal issues in the form of conflict of norms that exist in the implementation of the objectives of Law no. 39 of 2007 concerning Amendments to Law Number 11 of 1995 concerning Excise, and implementing regulations related to the implementation of the Tobacco Excise Production Sharing Fund work program towards the contribution of these funds to protecting public health and relating it to the human rights of the health sector when COVID-19 is still endemic. The author views this as a contradiction in terms. This research shows that there is a contradictory side, namely between the objectives in the field of fulfilling the national health rights which want to achieve the Health Law, with the objectives of the Excise Law and its implementing regulations that still side with industries.

Keywords: Excise Revenue Funds, Health COVID-19, Human Rights.

INTRODUCTION

Indonesian people are accustomed to various health warnings to stop smoking, calls such as "*smoking can cause cancer*", can be easily founded in various media, either in the form of digital advertisements, or written on the packaging for selling cigarette products. This is done provisions set by the government solely as a form of cigarette corporate business policy in Indonesia that adapts to the regarding the marketing and production of cigarettes. But the reality is the appeal is not enough to make people aware of the dangers of consuming cigarettes. Based on data obtained from the Central Bureau of Statistics Indonesia (CBPS, 2019), cigarettes are a commodity that contributes to Indonesia's poverty line. In September 2019 the poverty line was recorded at IDR 440,538 per capita per month, where cigarettes contributed 11.17% in urban areas and 10.37% in rural areas.

Indonesia is the country with the largest cigarette consumption in the world, which is in third place after China and India. Based on the Southeast Asia Tobacco Control Atlas

(SEATCA) report entitled *The Tobacco Control Atlas, ASEAN Region*, showing Indonesia as the country with the highest number of smokers in ASEAN, namely 65.19 million peoples. This figure is equivalent to 34% of the total population of Indonesia in 2016 (Widowati, 2019).

The World Health Organization (WHO) since 2014 has named Indonesia as the country with the highest number of teen smokers in the world (WHO, 2015) and in Indonesia too, smoking is the main form of tobacco use. Nationally, the prevalence of smoking was 29% (the province with the highest prevalence in Indonesia is West Java at 32.7% and the lowest smoking prevalence is in Papua at 21.9%). Source from WHO prevalence data, that the prevalence of male smokers in Indonesia in 2015 was the highest with a rate reaching 76.2% (Anwar, 2019). Overall, the prevalence of smoking has increased.

As much as 32.1% of teenagers in Indonesia consume cigarette products. A fairly high increase in prevalence was found in the male adolescent group aged 15-19 years, from 13.7% in 1995 to 38.4% in 2010. According to the Global Youth Tobacco Survey report (2014), teenage smokers aged 13- 15 years started smoking at the age of 12-13 years (43.2%) and 11.4% started smoking at the age of 14-15 years. The desire to smoke also started at a very early age, with 8.9% started smoking at the age of 7 years. This happens because it is related to the nature of adolescents who tend to take risks and the existence of peer pressure, high curiosity, and also being encouraged by the closest environment such as family (Tobacco Control Support Center). Moreover, the rate of adult male smokers is 67% and makes Indonesia the highest adult smoking country in the world (Weissbrodt, 2005).

Based on research conducted by John Hopkins University researchers, most poor families in urban Indonesia pass on smoking to their children through the head of the household, by diverting a portion of household money from food to the smoking budget. It is suspected that the free circulation of cigarettes is one of the causes. With a relatively cheap selling price and reactions to addictive substances that have an addictive effect, it is no wonder that cigarettes are common in many circles.

In many advertisements that the tobacco corporation introduces to the public, using various social constructs such as self-expression, personality symbols, and free lifestyle. Without having to illustrate the concrete form of cigarettes, advertisers package ad content very well and are associated as a form of self-expression (Prameswari, 2014). The advertising content packaging has deliberately campaigned continuously in order to be accepted by the subconscious of potential consumers. So that in the end it is recorded in the mind which then leads to the act of customizing smoking as a normal thing in urban life (Shamir, 2005).

The tobacco corporate image has been built in the community as an industry that is responsible for the development and resilience of the national economy. Claims made on the share of media publications, besides that the tobacco corporation builds its company's reputation through the Corporate Social Responsibility (CSR) program. Indonesia is "*The Tobacco Industry's Disneyland*". This was conveyed by Mark Hurley as advocacy director for the Campaign for Tobacco-Free Kids for Indonesia (Webster, 2013). Indonesia is the only member state which has not ratified the Framework Convention on Tobacco Control (FCTC).

In fact, the government has long made regulations regarding the packaging and nicotine content of cigarette products produced by industry players. The development of the number of cigarette corporations in Indonesia has actually decreased every year. In 2007 there were 4793 cigarette companies operating in Indonesia, but in 2011 there were 1664 cigarette companies

remaining, making that year the lowest point of the cigarette business. The decline is not because cigarettes are unfavorable investments in the tobacco sector. The reason is small and medium-scale local cigarettes are being expanded by foreign investors, in this case, are large-scale cigarette companies by acquiring and or merging with smaller-scale corporations.

Based on what has been written above, the author considers that the tobacco industry in Indonesia has a complicated dilemma. This was stated by the author because the tobacco industry sector has long supported state revenue through taxes and excise. According to historical records, cigarettes have been mass-produced in Indonesia since 1700. Then in 1970, the tobacco industry in Indonesia continued to grow, and then in 1900, Nipah cigarettes and Wangen cigarettes became known. In 1910 the H.M Sampoena industry began to emerge in Surabaya and in 1925 a kretek cigarette factory began to emerge which spread throughout the northern part of Central Java.

However, the existence of the tobacco industry has received a lot of criticism because at the same time the campaign for a healthy lifestyle (P2PTM Ministry of Health). With a paradigm that has been built, rooted, and it is added that state revenue from the excise sector is important as one of the state's efforts to limit the level of tobacco in Indonesia with the consideration of protecting the health of the citizens.

From the results of excise levied on tobacco products, it is channeled again through the tobacco excise revenue sharing work program. The excise levied on tobacco products also is used to cover the deficit of the national health insurance budget. The author views this as a two-sided dilemma, each side having contradicting goals. Given the level of complexity of the national health insurance is increasing because of the pandemic outbreak of Corona Virus Disease 2019 (COVID-19) which has been designated as a national non-natural disaster through Decree of The President No. 12 of 2020 (Keppres 12/2020). The author emphasizes that one of the basic rights of the people is to obtain health insurance in accordance with the mandate of The 1945 Constitution of the Republic of Indonesia (Contrast, 2017).

Based on the things above, the authors are interested in criticizing excise levied on tobacco products and its goals and benefits in the economic sector and national health insurance. The author has determined the problems that will be further criticized in this scientific paper, which are as follows:

1. How is the excise levied on tobacco products policy from the perspective of the state and what conflicts of norms are there?
2. How is the health sector human rights framework applied to excise levied on tobacco products admissions; associated during COVID-19 pandemic?

METHODOLOGY

In this paper, the type of research method used is juridical normative or doctrinal research, which raises legal issues in the form of conflict of norms that exist in the implementation of the objectives of Law of The Republic of Indonesia Number 39 Year 2007 on Amendments To Law Number 11 Year 1995 on Excise (Excise Law) and implementing regulations related to the implementation of profit sharing funds from tobacco excise, a work program for the contribution of these funds to public health protection, and linked to the urgency of human rights in the health sector when COVID-19 is still endemic. The author views this as a

contradiction in terms of the content of policy products and the realities in the consumption market.

The author will criticize the state's claims through its policy products which say that these policies can be designed to meet the goals of health, economy, consumption, and be followed by other social policies. The normative juridical approach is legal research which is carried out by examining library materials or secondary data as the basic material for research by tracing the regulations and literature related to the problem under this paper.

RESULT

Excise Levied on Tobacco from a Policy Perspective Accompanied by Slices of Conflict of Norms That Exist. At the beginning of the discussion in this chapter, the author explained a little about the things that make the difference between cigarette excise and cigarette taxes. The difference lies in the subject, object, basic imposition, and rates. The subject of cigarette excise is not clearly stated in the Excise Law, but it is known from Article (7) of the Excise Law, that cigarette excise has a description of its subject that can be attached to cigarette corporations or importers even though business actors transfer the burden to the final consumer as the real tax bearer (Soerjono & Mamudji, 2001).

The definition of excise according to the Excise Law is a state levy imposed on certain goods that have characteristics stipulated by the Excise Law. According to Parthasarathi (1995), excise is defined as taxes imposed on the consumption of selected goods, such as alcoholic beverages, tobacco products, and petroleum products (Shome, 1995). This is complemented later by Wagner (1983). That the levy is made on a specific transaction on the product in commerce, or one type of indirect tax collection that has special characteristics that are not owned by general tax objects, even not similar to the types of taxes that are used both belong to the indirect tax category (Sari, 2010). The characteristics of the excisable goods are as follows (Excise Law: Article [2] clause [1]):

1. Their consumption needs to be kept under control;
2. Their circulation needs to be monitored;
3. Their use can adversely affect the public or natural environment;
4. Their use of which government taxes need to be charged for the sake of justice and balance, in the form of excise duty as set out in this law.

Based on Article 2 Clause (1) of the Excise Law, it can be used as a basis for legal certainty from the perspective of the state, namely to expand excisable goods or commonly referred to as extensification of excisable goods. In general, excise knows the “*excise tax*” and “*excise duty*”. The imposition is carried out directly without going through an assessment and is measured based on the size of the business or income received (Excise Law: Article 4). Definition of “*excise duties*”. If referring to the OECD are special taxes imposed on certain types of goods, usually alcoholic beverages, tobacco, and fuels, “*excise duties*” can be imposed on any production or distribution and are generally assessed by reference to the weight or percentage of the total product (OECD, 2018).

Then, if it refers to the “*International Tax Glossary*” version of the International Bureau of Fiscal Documentation (IBFD), excise is a flexible concept that refers to a tax on an action or transaction covers the production, sale, import or consumption. Excise in this version is also

applied to cigarette products. According to Sijbren Cnossen (Cnossen, 1977), “*excise*” is one of the oldest types of levies in the world (Thuronyi, 1996). The imposition of excise, among others, is to increase state revenue, reflect external costs, and to control consumption (Steven, 1998).

Every item that is categorized as excisable goods is automatically recognized as meeting the four criteria above. Excisable goods levies are based on the content of the raw materials used in the product regardless of the shape or form of the product. Thus, as long as the product in question meets one of the criteria, it will qualify as excisable goods with a predetermined percentage. Regarding the highest excise tariff limit for tobacco products, the Excise Law classifies it with products manufactured in Indonesia and imported products. The Excise Law also determines the highest rates for tobacco excisable goods, which are as follows:

Setting the highest tariff at 275% (two hundred and seventy five percent) from the factory sale price or 57% (fifty seven percent) from the retail sale price takes into consideration that if excisable goods due to their nature and or characteristics are deleterious to health and as such are to be tightly restricted as to their circulation and usage, restrictions can therefore be placed through tariffs, whereby the said excisable goods may be subject to the highest excise tariff.

Setting the highest tariff at 275% (two hundred and seventy five percent) of the customs value plus import duty or 57% (fifty seven percent) of the retail sale price takes into consideration that if excisable goods due to their nature and or characteristics are deleterious to health and as such are to be tightly restricted as to their importation, circulation and usage, restrictions can therefore be placed through tariffs, whereby the said excisable goods may be subject to the highest excise tariff.

Based on the Ministry of Finance's report compiled by 'katadata.co.id' (Jayani, 2019), during the 2015-2018 period, excise levied on tobacco product revenues always dominated with an average contribution of 96% to total excise revenue. In 2018, excise levied on tobacco product revenues amounted to IDR 152.9 trillion or contributed 95.8% of the total excise revenue of IDR 159.6 trillion. Then the excise levied on tobacco product revenue figure increased by 3.5% compared to 2017 which amounted to IDR 147.7 trillion. In 2019, excise levied on tobacco product revenues increased by 3.9% to IDR 158.9 Trillion. Meanwhile, in the previous 2020 State Budget Draft, the first revenue was targeted at IDR 171.9 trillion, or growth of up to 8.2%. This pattern can be said to be a positive trend of excise revenue, and it indicates that the government enjoys cigarette excise revenue as an injection of state spending (Jayani, 2019).

Previously, Indonesia had a Bill on the Control of the Impact of Tobacco Products for Health (Kebijakan, 2014). When the bill issued into the national legislation program list (Prolegnas) in 2010-2014 and then became Bill priorities set in 2011. But controversy happens when the bill no longer a priority and eventually expelled. The Tobacco's Bill which is its successor, when reviewing the contents of the Bill on Tobacco, actually protects the interests of industry players rather than highlighting the impact of cigarette consumption on health.

The failure of the bill to become issued to legislation resulted in a number of substances in the Bill on Tobacco being included in Government regulation No. 109 of 2012 which is the implementing regulation of Law no. 36 of 2009 on Health (Health Law) to further regulate the procedures for safeguarding addictive substances. However, the promulgation of Government Regulation No. 109 of 2012 is not without problems, because there are special consequences, related to the availability of a choice of legal approaches in disciplining community behavior (Law No. 12/2011: Article 12 and Article 15). The placement of tobacco control regulations at

the government regulation level reflects the political condition of Indonesian law.

In this case, the government should involve more public participation in the development of Indonesian legal politics, especially in policies related to tobacco control. According to Jeffery M. Paige, the participation referred to above can be divided into:

1. Participation with high knowledge or public awareness and trust in the prevailing legal-political system. Members of society will have a major responsibility in developing existing obligations on behalf of the state;
2. Political participation with low political awareness and high trust in the existing political system. In this situation, the community is more passive, in the sense that they only accept the prevailing system;
3. Political participation in a society with low political awareness and beliefs. This condition places community members in a situation of pressure and fear of the arbitrariness of the authorities.

How good is the legal political condition of policymakers in seeing the hegemony of the cigarette corporation and its influence on public participation, judged by the paradigm of the first point from Paige's? So it tends not to show that the dominant government contributes to normalizing cigarettes as a product that seems to be equated with other commodities.

When compared with other countries in regulating the distribution and consumption of addictive substances, for example, Singapore with the 'Smoking Prohibition on Certain Places Act' which regulates the use of a minor criminal system, especially for sellers who violate terms of sale, America with 'Smoking Prevention and Tobacco Control Act 2009', or Malaysia with 'Food Act 1983'. All violations of cigarette trafficking are constructed as criminal acts regulated in statutory at the level of the constitution on law.

Regulations related to the use, monitoring, and evaluation of profit-sharing funds from tobacco excise are regulated through The Minister Regulation No. 7/PMK.07/2020 which has been promulgated since 23 January 2020. Under this provision, 50% of the profit-sharing funds from tobacco excise received in the current year and the remaining profit-sharing funds from tobacco excise previously received by the regional government must be used to support the National Health Insurance programs. In the previous provision, only 50% of profit-sharing funds from tobacco excise in the current year must be allocated to support National Health Insurance programs, whereas, in the previous provision, profit-sharing funds from tobacco excise was not required to pay for health services for the poor (Wildan, 2020).

For regions that have already established a program for the use of profit-sharing funds from tobacco excise before the latest The Minister of Finance Regulation issued. The regional government is obliged to make adjustments either through the elaboration of the regional revenue and expenditure budget or the amended regional revenue and expenditure budget. Local governments are also required to include programs for the use of profit-sharing funds from tobacco excise in the medium-term development plan based on the latest The Minister of Finance Regulation no later than the next medium-term development plan preparation.

However, the government has been issued a new policy that provides renewed treatment of business actors and the purpose of the regulation itself, namely to respond to fiscal policy conditions with the COVID-19 pandemic that is still endemic in Indonesia. The government's move to use profit-sharing funds from tobacco excise to be used as a stimulus for the COVID-19 prevention program is highly appreciated by many. But with a note that the distribution of funds must be in accordance with the program, right on target and under good supervision. This policy is contained in The Minister of Finance Regulation No. 19/PMK.07/2020, the regulation states

that profit-sharing funds from tobacco excise can be used by local governments for handling and preventing the spread of COVID-19 (Galuh, 2020).

Based on the contents of the Excise Law, profit-sharing funds from tobacco excise are distributed from the central government to local tobacco-producing governments to carry out all control programs with conditions, namely that the regions must meet the production targets set by the central government. However, the problem is not that it is not reducing the number of smokers, but the profit-sharing funds from tobacco excise are actually making local governments more inclined towards corporations as actors in the cigarette industry, with the aim of making production targets realizable. In principle, the higher the supply, production, and sales, will be directly proportional to the portion of revenue-sharing funds from tobacco excise the producing regional government. This scheme motivates non-tobacco-producing regions to become tobacco-producing regions as well.

The problem also issued on distributive justice between local governments and the central government. Because not all provinces in Indonesia are good regions to serve as tobacco-producing regions, and this policy model will generate social jealousy from non-producing regions. For example, in 2014 data, the receipt of profit-sharing funds from tobacco excise was only 17 out of a total of 33 provinces. This is even more so with the obligation mandated by the Health Law for regions to provide health services that require money. When a region is not a tobacco-producing region, the regional government will find it difficult to stimulate costs because on the one hand the regional government is not entitled to profit-sharing funds from tobacco excise from the central government but on the other side, the regional government must carry out its obligation to provide health services. So that many regions that are not tobacco-producing areas are constrained in realizing the obligations mandated by the Health Law on the grounds of budget. The existence of the profit-sharing funds' scheme from tobacco excise has actually become an incentive for non-tobacco-producing regions to change their regions to become tobacco-producing areas in order to get part of the profit-sharing funds' from tobacco excise programs (Mei, 2013). It can be seen that every time more and more administrative regions, especially at the regency/city level, change direction to become tobacco-producing areas (Sindo, 2019). So the realization of this phenomenon makes Indonesia the largest producer and the world tobacco trade arena (Azami, 2019).

The pattern that has the potential to be created is to open space for the tobacco industry to expand its business, which indirectly strengthens its dominance. The scheme of profit-sharing funds from tobacco excise should be designed with an inclusive and prorated characteristic to all regions, both producing and non-tobacco producing areas. The allocation must be limited in accordance with the excise philosophy, which is to control the impact of smoking on health, not just predominantly to develop the industry.

There is a conflict of norms which the author sees as quite controversial. This lies in the provisions of the Health Law with the implementing regulations for the Excise Law. In this case, The Minister of Finance Regulation on profit-sharing funds from tobacco excises. Referring to the Health Law, health insurance is stated as the obligation of everyone to participate in making it happen (Health Law: Article 13 and Article 20), it can be said that the state claims that efforts to realize health insurance are the main focus of this Health Law. There is a contradiction when comparing it with the implementing regulations for the Excise Law regarding profit-sharing funds from tobacco excise.

The Minister of Finance Regulation on profit-sharing funds from tobacco excise states that profit-sharing funds from tobacco excise take part in supporting the deficit in the health insurance budget. profit-sharing funds from tobacco excise in this regulation are used to fund programs that prioritize support for national health insurance, namely by providing a portion of at least 50% of the profit-sharing funds from tobacco excise received by each region (The Minister of Finance Regulation on profit-sharing funds from tobacco excise: Article 2 Clause). In The Minister of Finance Regulation on profit-sharing funds from tobacco excise, supports the health insurance program which includes increasing service activities, provision, maintenance of facilities or infrastructure in collaboration with all the National Health Insurance agencies (The Minister of Finance Regulation on profit-sharing funds from tobacco excise: Article 7 Clause).

Coupled with a narrative that states that health service activities, both in the form of promotive/preventive and curative/rehabilitative activities are prioritized to reduce the prevalence of stunting. In which the allocation of funds for health services for the poor or underprivileged is only 10% (The Minister of Finance Regulation on profit-sharing funds from tobacco excise: Article 7 Paragraph). The author views this as a real thing that the higher the excise revenue rate is directly proportional to the fact that the level of cigarette consumption has also increased. A term that the author can give such as "*the state tries to treat disease with disease*".

Implementation Human Rights Framework on the Health Sector in Excise Levied on Tobacco; Associated during COVID-19 pandemic

Health in a human rights perspective has a term that is often used at the level of international forums such as the United Nations, namely the term right to health. This can be found in Article 25 of the Universal Declaration of Human Rights (UDHR); Article 12 of the International Covenant on Economic, Social, and Cultural Rights, otherwise known as the Covenant on Economic, Social and Cultural Rights. The right to health can also be found in national instruments, namely Article 28 (H) Clause (1), and Article 34 Clause (3) amendments to the 1945 Constitution of the Republic of Indonesia; then in Article 9 of Law no. 39 of 1999 on Human Rights; and Article 12 of Law no. 11 of 2005 on Ratification of the Covenant on the Rights of Economy, Social and Cultural Rights. These provisions are further regulated in the Health Law. Regarding the state's responsibility in fulfilling the right to health, it can refer to the tripartite typology. A framework that specifically distinguishes the state's obligation to respect, protects, and fulfills human rights (Kimberly, 2003).

The right to health is part of the universal human rights component stipulated in the Covenant on Economic, Social, and Cultural Rights which has been ratified by Indonesia (Law No. 11/2005). In this covenant, it explicitly obliges the state to take measures that are measured according to their capacity (Covenant on Economic, Social, and Cultural Rights: Article 2 Clause [1]). The same thing is stipulated in the 1945 Constitution of the Republic of Indonesia Article 28 (H) Clause (1) and Article 34 which determines that health is a human right which is guaranteed by the constitution and its provision is an inseparable part of the policy of public health rights and is a norm that is universal in nature.

According to Loer (2019), one of the reasons why tobacco control policies deserve to be highlighted as a reflection of the state on its commitment to fulfilling the rights of its citizens is that tobacco is no longer denied as a product that is harmful to health, various medical research has stated so (Loer, 2019). When highlighting public policy, the writer refers to the definition

given by Dye (Dye, 2013) what ever the government wants to do and not to do.

From Dye definitions relevant to look at the government-owned power relations. Through power relations, the government can choose to do something with the consequences and consequences. Dye's opinion can also be used to describe tobacco control legal policies because the government's political will to ensure the fulfillment of public health rights is reflected in the quality of legal regulations created. To fulfill the right to health, there are 4 types of approaches as a state effort to guarantee the health of its citizens (Health Law: Article 47), namely promotive, preventive, curative, rehabilitative approaches (Health Law: Article 1).

It should also be noted that there is a principle of respect for human rights. This principle is what distinguishes genuine CSR and tokenism. Every organization must respect human rights and recognize the urgency of human rights values as a universal instrument (Jalal, 2013).

Referring to Article 28 (H) of the 1945 Constitution of the Republic of Indonesia, related to social security in the health sector is a right for every Indonesian citizen. This emphasizes that health services are the responsibility of the state to ensure that the guarantee of the right to health can be enjoyed by all Indonesian citizens (Lokataru Foundation, 2020). Referring to Article 28 (H) of the 1945 Constitution of the Republic of Indonesia, related to social security in the health sector is the right of every Indonesian citizen. This confirms that health services are the responsibility of the state to ensure that the guarantee of the right to health can be enjoyed by all Indonesian citizens.

The office of the United Nations High Commissioner for Human Rights has issued human rights guidelines that need to be fulfilled amidst various situations that occurred during the pandemic COVID-19. Respect on fulfillment of human rights including economic, social, and health rights (Lokataru Foundation, 2020). In terms of access to health services, the health strategy used during the COVID-19 pandemic is not only needed to address the medical sector, but it is also important to consider human rights and its consequences in every policy related to health including the impact of smoking cigarettes.

It should be noted that the human rights approach in driving tobacco control efforts is not yet existent and is a serious scientific issue, even though the human rights slice is very large in tobacco control. Even a human rights approach can actually strengthen the tobacco control framework in order to protect people's health and human rights it (Kasim, 2013). In this case, there is a state obligation in fulfilling human rights, in which the state c.q. the government has the position of duty bearer. The form of obligations that the state carries is an obligation to respect, obligation to fulfill, and obligation to protect (Nowak, 2005).

The development of the concept of human rights itself is divided into three stages. The first generation of human rights is rights in the civil and political sphere, which Koopmans calls the classic basic rights (*de classieke grondrechten*) (Soemantri, 1998); The second generation of human rights is marked by the emergence of demands for economic, social and cultural rights, which Koopmans calls basic social rights (*de sociale grondrechten*); and the third generation of human rights is solidarity rights which means human rights for the development of community welfare (Soemantri, 1998).

The right to health in human rights is often classified into social, social, and cultural rights and solidarity rights. If this right is linked to '*individual health*', it is classified into social, social, and cultural rights, and if it is related to '*public health*', it is classified as the right to develop community welfare. According to Muladi, the category of human rights in the right to

develop community welfare is given to collective rights based on the much-needed solidarity. These human rights include "*The rights to development; right to peace; and the right to a healthy and balanced environment*" (Muladi, 2004).

According to the description stated by Karel Vasak, those human rights in social, social, and cultural rights are related to equality in the social and economic fields. Human rights on economic, social, and cultural rights require equal economic conditions and social treatment among citizens. The rights related to this include the right to work, the right to housing, the right to social security, and including the right to health (Vasak, 1997).

In terms of the obligation to fulfill, it is implemented by adopting all appropriate legislative, administrative, and budgetary measures to fulfill human rights. One of them is developing regulations related to tobacco control comprehensively to realize the right to health (Dresler & Marks, 2006). Regarding the right to health, it is stated in the Covenant on Economic, Social, and Cultural Rights which was ratified in 2005 through Law No. 11 of 2005. Thus, the human rights norms in the right to, economy, social, and culture are binding and apply as national law (Mulyana, 2012).

The prediction of the Minister of Finance that economic growth contraction will decrease; this is the impact of COVID-19. Indonesia's economic growth could touch the worst-case scenario; the Ministry of Finance is keeping the economy from experiencing a recession this year. The projected economic growth this year is still minus 0.4% to 2.3%. The author views that the government must be quick, precise, and careful in making policies, things that are not a priority should be postponed and in policy, products must be followed by a sense of crisis.

With regard to the best-known industry, which has been the driving force of the community's economy so far, it is quite natural for the government to protect tobacco farmers and maintain a production climate, both production for domestic distribution purposes and production for export. This has become one of the economic drivers for the community in the midst of the COVID-19 pandemic which has caused sluggishness in various sectors as it is today (Miftahudin, 2020).

But it must also be aware that the circulation of tobacco products can have an impact on increasing the death rate from diseases which should be prevented, so the application of minor criminal sanctions such as social punishment or imprisonment can be seen as a policy alternative. This is to achieve benefits for the community, considering that cigarettes have become a product that is claimed to contribute greatly to national economic growth, but on the other hand has contributed to creating a high mortality rate that could have been prevented. As well as expanding the problem of structural poverty in society (Heru, 2004).

Based on what has been explained in this last chapter, the author has the view that industrial actors, the state through the government, and the community have very high connectivity. Especially in terms of production, distribution, and final consumption of these cigarette products. Each component has its respective roles, industry players must know what is their obligation besides exercising their rights to carry out business activities. The government, as the policymaker and creator of controlling instruments in the form of regulations, must be precise, fast, and thorough in carrying out its role.

The community must also understand the impact on themselves and the surrounding environment if they choose to consume tobacco products. Because the product has included an appeal in the form of dangerous effects when choosing to consume it. But the fact is that so far,

revenue from the tobacco excise sector is still one that the state relies on, and this is evidence that the level of public consumption of cigarettes is still high. The government must evaluate this by involving business actors and giving the public a clearer literacy regarding the effects of smoking on health. Moreover, coupled with the urgency of the right to fulfillment and health insurance amid the COVID-19 pandemic, it is still the concentration of any country. Thus, if people still choose to continue the smoking habit without trying to get used to living a healthy lifestyle, this will potentially worsen the situation.

CONCLUSION

Indonesia regulates tobacco products and their derivatives as excisable goods through the Excise Law. The government is also trying to deregulate policies related to the tobacco industry by pursuing several policy products that lead to the extencification of excisable goods and gradually increase the excise rates. There are claims that the government wants to achieve goals, namely to control cigarette consumption which has an impact on improving public health. In this case, the authors provide recommendations in the form of smart regulations as an effort to control tobacco. The special feature of smart regulations is the use of a combination of instruments to compensate for the inherent weaknesses of using a single instrument, the combination of instruments is believed to be a determinant of the success of a policy. In essence, this regulatory model was initiated to accommodate the interests of three parties, including industry, government, and society, which have conflicted with each other. The combination of instruments referred to is the application of permits to sales units that interact directly with end consumers (Licensing) with the concept of zoning which has been implemented in many regional regulations regarding smoking-free areas (Zoning). However, it should be noted that the author considers profit-sharing funds from tobacco excise as one of the excise levied programs on tobacco products is still counterproductive. It can be seen from the pattern of schemes that were created which opened up space for the cigarette industry to expand its business and indirectly strengthen its dominance. The profit-sharing funds scheme from tobacco excise should be designed with an inclusive and prorated characteristic to all regions, both producing and non-producing areas, and its allocation should be limited following the excise philosophy itself, namely to control the health impacts of smoking, not dominant for developing industry. This is what makes the author see that there is a contradiction in terms and there is a conflict of norms between the objectives to be achieved by the Health Law and the objectives in the Minister of Finance Regulation on profit-sharing funds from tobacco excise.

The health and safety of all citizens, including workers (in this case tobacco farmers), must be protected. Because of that, made a dilemma for workers because, on the one hand, they have to keep working for their families but on the other hand protection from the state in the health sector during COVID-19 is not well guaranteed, plus there is a stigma that no one forces them to continue working. In this COVID-19 pandemic, there are still many elements of society that still have to work. And if it is related to the cigarette epidemic which is still very large when the COVID-19 pandemic is still endemic, the authors view that there is a contribution from the cigarette industry in increasing the death rate and even structural poverty in Indonesia. So the authors view that the cigarette industry is inherently a business entity that violates health human rights. The excise levied on tobacco product program in the form of a profit-sharing fund scheme from tobacco excise which is allocated at least 50% for the health sector is seen as contradictory

because of the consideration that market products issued by the industry to the community also contribute greatly to lowering the quality of national health.

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