



LEGAL BRIEF

journal homepage: www.legal.isha.or.id/index.php/legal



Juridical Review of the Circulation of E-Cigarettes (Vaporizers) Containing Addictive Substances Based on Law No. 36 of 2009 on Health

Atika Sunarto¹, Ronal Pranata Manullang², Mashita Margaretha Manurung³

¹²³Fakultas Hukum,

¹²³Universitas Prima Indonesia, Jl. Sampul No.4, Sei Putih Bar., Kec. Medan Petisah, Kota Medan,
Sumatera Utara 20118, Indonesia

Email: atikasunarto@gmail.com¹, ronalpranata99@gmail.com², mashitamanurung06@gmail.com³

Abstract

Smoking is one of the activities that are still carried out by individuals at all ages, from teenagers to adults. Many ways can be done in an effort to stop smoking, such as committing, replacing cigarettes by consuming sweets, diverting cigarettes with more useful activities. But now news is circulating about smokers who try to quit smoking using e-cigarettes. propylene glycol, and taste. e-cigarettes contain liquid nicotine, propylene glycol, and glycerin. If all the ingredients are heated the meal will produce nitrosamine compounds and those compounds can cause cancer. Therefore, consumer protection must be strictly enforced. Results of this study said that e-cigarettes and conventional cigarettes have the same danger to their users because they contain nicotine and addictive substances that are harmful to health.

Keywords: Consumer; E-Cigarettes; Consumer Protection; Cigarette Hazards.

A. Introduction

Cigarettes are a global health problem. Though most people know the dangers of smoking but in fact smoking becomes a culture. *The World Health Organization* (WHO) estimates the number of smokers in the world at 2.5 billion people with two-thirds of them in developing countries. At least one in four adults is a smoker in a developing country. In general, smokers were higher in countries with low per capita incomes and the most in the young adult population group with a ratio of 27% of men and 21% of women. Smokers in the United States are 26% male and 25% female. There are several factors that influence a person to smoke, namely, nicotine substances contained in cigarettes make a person addicted to cigarettes, environmental factors, individual factors that feel calmer and focused in carrying out daily activities. According to the Food and Drug Administration (BPOM), e-cigarettes contain liquid nicotine and propylene glycol solvents, *glycol dieters*, and *glycerin*. When all the ingredients are heated, it will produce *nitrosamine compounds*. These compounds can cause cancer. The legal facts about the dangers of using e-cigarettes containing addictive substances are regulated in Article 113 Paragraph 2 of Law No. 36 of 2009 concerning. Health which states that "addictive substances as intended in paragraph 1 include tobacco, products containing tobacco, solids, liquids, and gases of an addictive nature whose use

can cause harm to oneself and society around it". In Government Regulation of the Republic of Indonesia Number 109 of 2012 concerning the safety of substances containing addictive substances in the form of tobacco products for health further in Government Regulation No.109 of 2012 confirms that Addictive Substances are substances that cause addiction or dependence that endanger health with various signs such as: changes in behavior, cognitive, and physiological phenomena, strong desire to consume these ingredients, difficulty in controlling its use, increases tolerance and can lead to a state of hopeless symptoms. Based on the legal facts above, it is certainly a problem if the circulation of e-cigarettes that are widely used today in Indonesia is still allowed because the circulation of e-cigarettes like that does not cause the interest of consumers who need protection in consuming a product to still feel Safe, comfortable, and the absence of Special Regulations that regulate legally for consumers, therefore researchers are interested in discussing the "Juridical Review of the Circulation of E-Cigarettes (Vaporizers) Containing Addictive Substances Based on Law No. 36 of 2009 on Health".

B. Method

The research method in analyzing this research is to use empirical methods. Namely analyzing the obstacles to the criminal prosecution process during the Covid-19 period at the Belawan state prosecutor's office. Research using primary data methods. Primary data is a research material in the form of empirical facts about the duties and obligations of the prosecutor as a prosecutor in criminal cases. Primary data obtained directly from the research site by means of a direct interview with a prosecutor and observations directly at the Belawan state prosecutor's office. This research was conducted at the Belawan state prosecutor's office, Jl. Raya Pelabuhan Belawan, Bagan Deli, Medan Belawan city, Medan City, North Sumatra 20411. The primary data was conducted by a direct interview to the Belawan state prosecutor and direct observation at the Belawan state prosecutor's office. The data obtained is then analyzed using qualitative descriptive methods. That the crime rate after Covid-19 increased by 50% in 2020/2021 on the theft rate, 80% on the drug crime rate and 70% on the crime rate of ganging. The data collection techniques used in this study are in literature and by means of interviews and documentation. In this study, the compiler used the interview method, which was an interview conducted against one of the prosecutors at the Belawan state prosecutor's office.

1. Source Legal Materials

a. Primary Legal Materials

Primary legal material is legal material that is authoritative means having authority. The primary legal materials consist of:

- 1) Law No. 36 of 2009 concerning Health
- 2) Law No. 8 of 1999 concerning Consumer Protection
- 3) Government Regulation No. 109 of 2012 concerning The Safety of Ingredients containing Addictive Substances tobacco products for health.

b. Secondary Legal Materials

Is a legal material that helps or supports primary legal materials in research that will strengthen the explanation in it. Secondary legal materials in

the form of legal books, legal journals, legal papers, or news contained in the mass media.

c. Tertiary Legal Materials

Is a legal material that provides instructions or explanations to primary and secondary legal materials such as legal dictionaries, encyclopedias, etc

2. Data Collection Techniques

Collection of legal materials in *library research* is a documentary technique, which is collected from archival studies or literature studies such as, books, papers, articles, magazines, journals, newspapers or the work of legal experts.

3. Data Analysis

All data collected in the field, will be grouped according to the relevance / relationship with the problem studied. Then with the ability of the author's legal knowledge, the data is analyzed (processed) qualitatively to answer problems in research and presented in the form of research reports (thesis) descriptively

C. Results and Discussion

1. Legal Regulation on The Security of Addictive Substances Is Based on Law No. 36 of 2009 concerning Health

Government Regulation of the Republic of Indonesia Number 109 of 2012 concerning the Safety of Materials that contain addictive substances in the form of tobacco products for health states that "Health development as One of the national development efforts is directed to achieve awareness, willingness, and ability to live healthy for every population, in order to realize the highest level of health" In order to realize the highest possible degree of health for the population and the community, the implementation of various health payments where one of the payments is intended to be the security of Addictive Substances that have been regulated in Article 113 to Article 116 and also Article 199 of Law No. 36 of 2009 concerning Health. In Article 113 paragraph (2) of Law No. 36 of 2009 concerning Health, it is stated that Tobacco Products are Addictive Substances In the Government Regulation of Addictive Substances it is an ingredient that causes dependence and addiction that can be Harm to health by characterizing it in changes to cognitive, behavioral, and physiological phenomena, then a strong will in consuming the material, giving priority to the use of the material rather than the activity that I aim, difficulties regarding controlling it related to its use, increased tolerance and can make a situation with symptoms of substance withdrawal. In 2013, the european parliament published a draft law to introduce a number of decisions or policies shown to limit the power of tobacco for residents and communities which included provisions against the population. E-cigarettes, namely:

- a. Rik cigarettes that do not have a claim must be made with contents that are not more than 30mg / ml of niktoin, and must include health warnings and are not allowed Sold to those under the age of 18
- b. E-cigarettes will be regulated but not exactly the same as the existing regulations on medicinal products except those who provide presentation of products that have curative properties or as a prevention.

2. Manufacturers and Importers List and Provisions of Quality Standards and/or Requirements for the Circulation of Applicable E-Cigarettes

Until now there are no rules. provide the whole of the ingredients it contains in the product E-cigarettes will be subject to the same advertising restrictions on tobacco cigarette products. The WHO has conducted a discussion on e-cigarettes at the 2014 International *Framework Convention on Tobacco Control (FCTC)* meeting that advises its member states. in order to make a formulation of policies for restrictions on the promotion of e-cigarettes, payment in minimizing health risks in e-cigarettes. It is also mentioned that e-cigarettes can still pose a threat to health, and can be the beginning to become an active smoker. In various countries in this part of the world, the categories for the classification of e-cigarettes vary, there are countries that classify it according to medicinal products, cigarettes and tobacco, as well as medical devices until the rules vary according to the Grouping in the country concerned which is not less than 15 countries have made strict regulations to not allow or prohibit the marketing and sale of e-cigarettes. In Indonesia itself until now the government is still discussing the preparation of terkait on the rules against e-cigarettes. There are also e-cigarettes that are widespread at this time, namely imported products. BPOM has made a review and encouraged the parties concerned so that the decision on e-cigarettes can be quickly determined by referring to various facts and seeing various developments from the use of e-lektric cigarettes. Which is expanding and also a lot. As the country that has the highest prevalence of smoking behavior number 3 in the world, control of the effects of cigarettes for health is very necessary to make it as aU.S. priority regarding the arrangement through which decision instruments by considering it in a long-term perspective. for health that includes including not only to smokers, but to non-smokers¹. as well as regulations on standardization that exist in the content of vape in the country of Indonesia. The rules of BPOM are related to special standards for devices and liquids. In November 2017, the Ministry of Trade has issued candy trading No. 86 dated November 10, 2017 which regulates the Import of Electronic Cigarettes, and also stipulates the requirements in obtaining import permits, one of which is a recommendation and also BPOM. However, the next 10 hari issued another letter of delay for the implementation of PERMENDAG No. 86 of 2017 by the Coordinating Minister for Economic Affairs of the Republic of Indonesia. Until now there are no regulations governing electronic cigarettes. This matter is in accordance with the instructions from the President No. 7 of 2017 concerning Supervision, Retrieval, and Control of Policy Implementation at the Level of State Ministries and Government Agencies. Regarding the BPOM Recommendation which he listed as a compensation for Electronic Cigarette Information in the postponed PERMENDAG, then BPOM did an assessment of the efficacy, safety, and also quality of the drug until it would only do the assessment. the products it registers as medicines². The requirements in obtaining permission and distribution recommendations must also follow the requirements for the drug without exception. In accordance with BPOM's vision to improve the health of the population to BPOM will only do abroad assessment of the products it registers as medicines. If the negotiations are carried out with several countries in ASEAN alone, there are several countries that firmly make

a decision on the prohibition of sales of all types of e-cigarettes, including: Singapore, Brunei Darussalam, Cambodia, and Thailand.

Although the discovery of countries such as Malaysia which is only limiting the sale of e-cigarettes with a minimum age limit of 18 years and limits on the levels of nicotine substances contained in liquids. As for BPOM which still remains in a position that does not allow electronic cigarettes, in accordance with its vision, namely to improve the health of the population and the community. Materials and substances that can affect a person's psychological and psychiatric can cause psychological and physical dependence mentioned as DRUGS. Which included in drugs are Psychotropic, Narcotics, and also Addictive Substances. Cigarettes are a category or group of Addictive Substances because it contains nicotine. BPOM is an institution under the auspices of the government that has duties related to the supervision and circulation of medicines and food in Indonesia. This surveillance system must supervise and prevent and also detect the products circulating are safe and ensure the safety and health of consumers at home and abroad. The stages of supervision of cigarettes are carried out by the whole of BPOM in each region throughout Indonesia because BPOM must take the entirety of e-cigarette samples that have nicotine and conventional substances containing in each region and The sample will be forwarded to PPOMN so that it can be tested on the content of tar and nicotine that is included on the packaging they create, the level must be the same on the packaging label produced. The results of this assessment by PPOMN will be in the form of certificates containing various kinds of information about cigarette products that do not meet the requirements and if the product does not meet the requirements then that way the product will be resubmitted to BPOM who sent the sample. If it is found that the cigarette product does not meet the requirements then it will He gave a sanction. The right is obtained by consumers to ensure the safety and security of consumers regarding the use and use of the goods they get. So that the National Standardization Agency (BSN) is formulating standards for various other tobacco processing products (HPTL) to protect consumers as they arise. Diversity of various HPTL products is widespread in Indonesia until the National Standardization Agency (BSN) has issued regulations regarding the SNI label on tobacco products that are heated. This matter has been stated in the decree of the Head of the National Standardization Agency Number 63 / KEP / BSN / 3/2021 concerning the

Determination of The Indonesian National Standard for Heated Tobacco Products. The head of BSN weighed: That in order to fulfill the importance of protection to business actors, consumers, workers, and other communities, developing the growth of healthy competition, security, safety, as well as the preservation of the function of the environment, the Final Draft of the Indonesian National Standard (SNI) compiled by the Technical Committee needs to be determined to be the Indonesian National Standard; That's what The Final Draft of SNI as intended in letter a, has been concentrated and also stated that it has been qualified to be designated to be an SNI, that is on the basis of consideration as intended in letters a and b, p There is a determination on the Decree of the Head of the National Standardization Agency regarding the Determination of Indonesian National Standards for heated tobacco products.

3. Due to The Law If There Is A Circulation of E-Cigarettes Circulating Without Having a Distribution Permit.

The obstacle experienced about the circulation of e-cigarettes is that there is no supervision by BPOM in the market. The production of electronic cigarettes has also not obtained permission from the Minister of Health and also Customs, the cause of the hal is the absence of customs labels and on the packaging of the product does not include it related labels in terms of the composition of the chemicals used in each package in the product. In international law, any of the acts that may harm the other parties must be held accountable by paying compensation or compensation. About e-cigarettes and also liquid liquids, this is only to regulate it about the provisions on imports of e-cigarettes in the Regulation of the Minister of Trade No. 86 of 2017 and about the imposition of customs duties on e-cigarettes and also existing liquids.

In regulation of the Minister of Finance No. 146 of 2017 concerning Excise Tariffs, according to PERMENDAG No. 86 of 2017 concerning the Provisions for The Import of E-Cigarettes contained in Article 1 paragraph (1) it is interpreted as a cigarette device used by heating the liquid that produces Smoke and smoked by its uk-renowned wearer liquid nicotine and liquid replacement nicotine is used as the contents of an electric cigarette machine. In PERMENKEU No. 146 of 2017 concerning Tobacco Excise Tariff Article 1 number 14 is outlined that nicotine liquid liquids intended for e-cigarettes included in the classifier (HTPL) and Other Tobacco Processing Products, namely the results of tobacco made by means of others are in accordance with the development of technology and also the tastes of customers, by not heeding the auxiliary and substitute materials used in the manufacture of the product. In Article 6 paragraph (1) states that htpl stipulated the excisetax on tobacco products by 57 percent.

D. Conclusion

1. Addictive Substances According to Government Regulation No. 109 of 2012 concerning The Safety of Substances Containing Addictive Substances in the form of Tobacco Products for Health.
2. Nicotine in Law No.36 of 2009 on health states that health is a human right and one of the elements of welfare that must be realized in accordance with the ideals of the Indonesian nation as intended in Pancasila and the Constitution of the Republic of Indonesia in 1945.
3. The purpose of preparing quality standards is to facilitate trade, exchange and transfer of technology through: Product customization and quality of production at a decent price level.

References

- Abdul Ikadir Muhammad, Hukum dan Penelitian Hukum (Bandung: PT. Citra Aditya Bakti,2004)
Anonim, "Inilah Efek Samping Rokok Elektrik", www.meetdoctor.com,5 April 2016.
Badan POM.2015.InfoPOM.Badan Pengawasan Obat dan Makanan RepublikIndonesia.Jakarta:Vol.16 No5
BPOM Kajian Rokok Elektrik, Direktorat Pengawasan Narkotika, Psikotropika dan Zat Adiktif Badan Pengawasan Obat dan Makanan, thn 2017

- Huala Adolp, 2002, *Aspek-Aspek Negara Dalam Hukum Internasional*, Rajawali Pers, Jakarta.
- IrwanAfrianto "Tujuan,Manfaat,danRuangLingkupPenelitian",2020 <https://repositori.unikom.ac.id>
- Soerjono Soekanto, Pengantar Penelitian Hukum, Jakarta: Universitas Indonesia Pers, 2007.
- Saifullah, *Konsep Dasar Metode Penelitian Dalam Proposal Skripsi Malang*: Fakultas Syariah UIN Malang, 2004.
- Sui Generis dalam peristilahan hokum adalah ilmu hokum merupakan ilmu jenis sendiri dalam cara kerja dan sistem ilmiah. Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2005)