LEGAL PROTECTION FOR CHILDREN AGAINST THE THREAT OF ADDICTIVE CIGARETTE SUBSTANCES

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ABSTRACT

Purpose: This research aims to find legal protection for children under the age of 18 from the threat of dangerous addictive substances contained in cigarette products.

Method: The type of research is normative-juridical.

Result: The research results show that legal protection for children under the age of 18 from the threat of dangerous addictive substances contained in cigarette products from the perspective of child protection law and the Child Rights Covenant is in accordance with the basic principles of children's rights in the Child Protection Law and the Covenant Children's Rights, namely; the principle of non-discrimination, the principle of the best interests of children, the principle of child survival and development, and the principle of respect for children's opinions. The government should immediately ratify the Framework Convention on Tobacco Control (FCTC) or the Tobacco Control Framework Convention to strengthen regulations for protecting children from the dangers of smoking which threaten their health and growth and development.

Conclusion: The essence of legal protection for children under the age of 18 from the threat of dangerous addictive substances contained in cigarette products from the perspective of child protection law and the Child Rights Covenant is in accordance with the basic principles of children's rights in the Child Protection Law and the Child Rights Covenant, namely; the principle of non-discrimination, the principle of the best interests of children, the principle of child survival and development, and the principle of respect for children's opinions.

Keywords: protection, child, Addictive Zak, cigarette.

Received: 09/10/2023
Accepted: 08/01/2024
DOI: https://doi.org/10.55908/sdgs.v12i1.2555
RESUMO

Objetivo: Esta investigação visa encontrar proteção jurídica para crianças com menos de 18 anos contra a ameaça de substâncias viciantes perigosas contidas em produtos de cigarro.

Método: O tipo de pesquisa é normativo-jurídico.

Resultado: Os resultados da investigação mostram que a proteção jurídica das crianças com menos de 18 anos contra a ameaça de substâncias viciantes perigosas contidas em produtos de cigarro, na perspectiva da legislação relativa à proteção das crianças e do Pacto sobre os Direitos da Criança, está em conformidade com os princípios básicos dos direitos das crianças na Lei relativa à Proteção das Crianças e no Pacto sobre os Direitos das Crianças, nomeadamente: o princípio da não discriminação, o princípio do interesse superior das crianças, o princípio da sobrevivência e do desenvolvimento das crianças e o princípio do respeito pelas opiniões das crianças. O governo deve ratificar imediatamente a Convenção-Quadro para o Controlo do Cigarro (CQCT) ou a Convenção-Quadro para o Controlo do Cigarro, a fim de reforçar os regulamentos para proteger as crianças dos perigos do tabagismo que ameaçam a sua saúde e o seu crescimento e desenvolvimento.

Conclusão: A essência da proteção jurídica das crianças com idade inferior a 18 anos contra a ameaça de substâncias viciantes perigosas contidas em produtos de cigarro, na perspectiva da lei de proteção da criança e do Pacto sobre os Direitos da Criança, está em conformidade com os princípios básicos dos direitos das crianças na Lei de Proteção da Criança e no Pacto sobre os Direitos da Criança, a saber: o princípio da não discriminação, o princípio do interesse superior das crianças, o princípio da sobrevivência e do desenvolvimento das crianças e o princípio do respeito pelas opiniões das crianças.

Palavras-chave: proteção, criança, Zak Viciante, cigarro.

1 INTRODUCTION

Cigarettes are a product that is harmful to health but are still used by many people throughout the world. Cigarettes contain chemicals that damage the health of the lungs and other organs, and cause dependence (Moodie, 2017). There are two substances in cigarettes that are especially dangerous for health, namely nicotine and tar. Nicotine is a substance that has highly addictive properties and is one of the factors causing addiction and dependence on cigarettes (Minshra, 2015). In the long term, nicotine can cause poisoning; addicted; increased risk of diabetes; increased risk of cancer of the mouth, digestive system, breast and lungs; resistance to chemotherapy; cardiovascular disorders; respiratory disorders; digestive disorders such as gastroesophageal reflux disorder and ulcers; reduces the performance of the immune system; decreased vision; damage to the renal system; and negative impacts on the male and female reproductive systems.
(Minshra, 2015). Meanwhile, tar is the most carcinogenic and dangerous ingredient in cigarettes. When cigarette smoke is inhaled, tar forms a layer in the lungs (NCI, 2022).

The latest data from the 2019 Global Youth Tobacco Survey (GYTS) shows that 40.6% of students in Indonesia (aged 13-15 years), 2 in 3 boys, and almost 1 in 5 girls have used tobacco products: 19.2% of students currently smoke and of these, 60.6% are not even prevented from buying cigarettes because of their age, and two-thirds of them can buy cigarettes at retail. The data also shows that almost 7 out of 10 students saw cigarette advertisements or promotions on television or at sales points in the last 30 days, and a third of students felt they had seen advertisements on the internet or social media. These figures are certainly very worrying because they show that the younger generation continues to be exposed to tobacco use and cigarette advertisements with well-designed subtle messages to attract the younger generation to become addicted to tobacco and nicotine (WHO, 2020).

Exposure to tobacco at an early age not only creates lifelong smokers, but can also contribute to stunting and stunt the growth of children. This can also increase the risk of contracting chronic non-communicable diseases (NCDs) such as heart disease, chronic respiratory diseases, diabetes and cancer when they grow up.

The literature on smoking shows that smoking persistence is the result of the myopic nature of cigarette consumption decisions in Indonesia (Hidayat & Thabrany, 2010). However, this persistence differs between adults and children for various reasons for smoking. Adults smoke for personal and social reasons while children smoke mainly for social reasons (Rugkāsa et al., 2001). In this case, the literature emphasizes the role of positive peer relationships (peer effects) on smoking behavior (Ali & Dwyer, 2009; Krauth, 2007; Nakajima, 2007; Powell, Tauras, & Ross, 2005). Apart from that, the level of affordability of cigarettes will also influence consumption, especially in the context of teenage smokers. This study aims to look at the impact of the presence of peers and price levels simultaneously using a quantitative approach (cause and effect relationship) and using Susenas and IFLS survey data which represents the population of child smokers in Indonesia. (Indonesia, 2021).

The current situation is that cigarette sales continue to increase, as well as the number of cigarette consumption, child smoking, and deaths due to smoking are also increasing. In Indonesia, cigarette sales in 2021 increased 7.2% from 2020, namely from 276.2 billion cigarettes to 296.2 billion cigarettes. Cigarette consumption amounted to
70.2 million adults, and the use of e-cigarettes increased 10-fold from 0.3% in 2011 to 3% in 2021. The dangers of smoking have spread not only to adults, but also to children under the age of 18 years.

Data from the 2021 Global Adult Tobacco Survey (GATS) shows that 3 (three) out of 4 (four) people started smoking at the age of less than 20 years. Children whose parents smoke are at risk of stunting and therefore become less intelligent and get sick easily (Indonesia, 2021). Currently, 1 in 4 children are stunted. Cigarette consumption also influences household spending patterns, family spending on cigarette consumption is 3x higher than spending on protein (Susena, 2021). The cost of treatment for diseases caused by smoking is also very large, namely 596.6 T (Kosen, 2018), this amount is 4 times higher than the excise revenue from tobacco products of 147.7 T (Ministry of Finance 2017).

Data from the Global Youth Tobacco Survey in 2020, Indonesia ranks third in the world after China and India as the country with the highest prevalence rate of smoking among children aged 10 years and over. What is more worrying is that the number of child smokers is increasing. Still from the same source, data from the Global Youth Tobacco Survey, Basic Health Research (Riskesdas), and the National Poisoning Information Center (Sikernas) from the Food and Drug Monitoring Agency (BPOM) states that 3 out of 4 people start smoking at the age of less than 20 years. The prevalence of child smokers continues to rise every year, in 2013 the prevalence of child smokers reached 7.20%, then rose to 8.80% in 2016, 9.10% in 2018, 10.70% in 2019. If not controlled, the prevalence of child smokers will increase to 16% in 2030 (Replubika, 2020).

Based on estimates from the National Development Planning Agency (Bappenas), the increase in the prevalence of new smokers, especially children and teenagers, will continue to increase if there is no comprehensive policy to reduce the prevalence rate. In Indonesia currently, deaths due to 33 diseases related to smoking behavior reached 230,862 in 2015, with total macro losses reaching IDR. 596.61 trillion. Tobacco kills 290,000 people every year in Indonesia, including children, and is the largest cause of death from non-communicable diseases.

On the ASEAN scale, countries in the Association of Southeast Asian Nations (ASEAN) are the region with 10% of all smokers in the world and the region with 20% of the global causes of death due to tobacco. The data also states that Indonesia is the
country with the highest percentage of smokers in ASEAN countries (more than 50%) (Drope & Neil, 2018). The highest number of active smokers in teenagers (10-18 years) has increased from 7.2% in 2013 to 9.1% in 2018. East Java Province is ranked 16th in Indonesia as a region with a high rate of teenage smokers, which is quite high (Ministry of Health of the Republic of Indonesia, 2018) (Almaidah, 2021).

Apart from the many factors that trigger the high number of child smokers, the government's attitude has not ratified the Framework Convention on Tobacco Control (FCTC) or the Framework Convention for Tobacco Control. In fact, Indonesia is the only country in Asia that has not ratified and has not signed. According to WHO data, since the signing of the FCTC was first carried out by 168 countries in the period between 2003-2004. Indeed, if tobacco regulation is placed in the context of foreign exchange receipts, then the State has reasons not to ratify the FCTC. Indonesia is the 6th largest tobacco contributor in the world. However, if ratification of the FCTC is placed in the State's interest in creating a healthy society and protecting children's rights from the dangers of cigarettes and tobacco products, then ratification of the FCTC becomes mandatory.

In fact, the FTCT contains several important commitments that strongly support the control of tobacco products, especially when linked to the protection of children's rights to health. These commitments include: each participating country establishes a national financial coordination mechanism or focal point for controlling the impact of tobacco (Article 5). Participating countries strive to include smoking cessation efforts in their national health programs (Article 14). Participating countries prohibit or promote prohibitions on the free distribution of tobacco products (Article 16). Participating countries promote the participation of NGOs in national tobacco impact control programs (Article 12). Contracting countries prohibit the sale of tobacco products to those under the age of 18 under their national laws (Article 16). Countries that ratify the FCTC cannot make reservations (exclude) one of the articles of the FCTC (Article 30).

Health issues handling become a central attention, especially with the large number of cases occurring in the community over handling patients who are deemed not in accordance with service standards and or the occurrence of cases of acts against the law (Birkah, 2020)

Situasi ini menjadi tantangan berat dalam memberikan perlindungan hukum terhadap anak, sebagaimana tertuang dalam UUD NRI Tahun 1945, Children are an inseparable part of human survival and the survival of a nation and state. In the Indo-
children have a strategic role that is explicitly stated that the state guarantees the right of every child to survival, growth and development and to protect from violence and discrimination (Haeranah, 2020)

Undang-Undang Republik Indonesia Nomor 35 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak yang telah diubah dengan Undang-Undang Republik Indonesia Nomor 17 Tahun 2016 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2016 Tentang Perubahan Kedua Atas Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak Menjadi Undang-Undang (selanjutnya di singkat UU Perlindungan Anak). Over time, the development of children becoming more mature often occurs various kinds of negative phenomena that disturb their lives. Various social deviations that exist in our society today more and more occur and mostly happen tochildren. Although the law on protection has been issued (Aksan, 2020)

This situation is a serious challenge in providing legal protection for children, as stated in the 1945 Constitution of the Republic of Indonesia, which was then strengthened by Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection which has been amended by Law -Law of the Republic of Indonesia Number 17 of 2016 concerning the Determination of Government Regulations in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection into Law (hereinafter referred to as the Child Protection Law).

Regulations in Indonesia are not yet effective enough in providing legal protection for children under the age of 18 from the dangers of smoking. Meanwhile, the dangers of smoking are a real threat to children's growth and development. The Child Protection Law is not strong enough to provide legal protection to children under the age of 18. Article 59 of the Child Protection Law only states that special protection for children is given to: a. Children in emergency situations; b. Children in conflict with the law; c. Children from minority and isolated groups; d. Children who are economically and/or sexually exploited; e. Children who are victims of abuse of narcotics, alcohol, psychotropic substances and other addictive substances; f. Children who are victims of pornography; g. Children with HIV/AIDS; h. Children who are victims of kidnapping, sales and/or trafficking; i. Child victims of physical and/or psychological violence; j. Child victims of sexual crimes; k. Children who are victims of terrorism networks; l. Children with
Disabilities; m. Children who are victims of abuse and neglect. The norms in Article 59 of this Law do not regulate special protection for child smokers.

In the author's view, cigarettes, although they contain nicotine which is an addictive substance, the definition of addictive substance in Article 59 letter e of the Child Protection Law is an addictive substance in the terminology of the Narcotics and Psychotropics Law, while nicotine in tobacco and cloves in cigarettes are not included in this category, addictive substances according to the law. This lack of regulation provides an advantage for the cigarette industry, which mostly targets children under the age of 18 as consumers, in addition to adult smokers. Meanwhile, Article 28 B of the 1945 Constitution of the Republic of Indonesia, post-amendment, emphasizes that the state guarantees every child to live, grow and develop and has the right to protection from violence and discrimination.

Republic of Indonesia Government Regulation Number 109 of 2012 concerning Safeguarding of Materials Containing Addictive Substances in the Form of Tobacco Products for Health (hereinafter referred to as PP on Tobacco Products) is also not strong enough to provide legal protection to children from the dangers of smoking. Although Article 2 of this PP regulates the implementation of safeguarding the use of materials containing addictive substances in the form of tobacco products for health, one of the aims is to protect the population of productive age, children, teenagers and pregnant women from environmental incentives and the influence of advertising and promotions to initiate use and dependence on substances containing addictive substances in the form of tobacco products, is not very effective because it does not regulate concretely and in detail what form of protection is provided. Articles 19 to 21 of the PP indeed contain a prohibition on anyone who produces and/or imports tobacco products to then sell or give them to children under 18 years of age and pregnant women, but the facts on the ground show that it is easy for children under 18 years of age to obtain and consume the cigarette.

This situation requires strengthening the legal aspects of protecting children from the potential or threat of the dangers of smoking. Implementing child protection principles in the Convention on the Rights of the Child consistently in national law is an urgent need to save children from the dangers of smoking, a form of strengthening regulations related to child protection by expanding special protection norms for children by including smoking as a threat to children's growth and development accompanied by with the
addition of special protection norms in the Child Protection Law against the threat of addictive substances in cigarette products.

2 THEORETICAL FRAMEWORK

Of the many factors that trigger or encourage the high number of child smokers, the government’s attitude of not ratifying the Framework Convention on Tobacco Control (FCTC) or the Framework Convention for Tobacco Control makes it difficult to reduce the number of child smokers to a minimum. In fact, Indonesia is the only country in Asia that has not ratified and has not signed. According to WHO data, since the signing of the FCTC was first carried out by 168 countries in the period between 2003-2004.

This attitude clearly contradicts the 3 (three) principles of State obligations in human rights doctrine, namely; respect (to respect), protect (to protect), and fulfill (to fulfill). Respect: The State must respect children’s right to health by not allowing children under the age of 18 to be exposed to substances in a product that endanger their health and future. Protecting in the event that the State is obliged to protect children's rights to health as stated in statutory regulations. Fulfillment in terms of the State being obliged to fulfill children's right to health by providing maximum health services to children from exposure to addictive substances in tobacco products and not providing broad access to the cigarette industry in advertising, promoting and marketing its products which can be accessed by children under 18 years of age.

Every individual has the right to live and achieve the highest level of health. The government is obliged to protect the public from all kinds of things that could hinder the achievement of these human rights. Smoking clearly threatens health and prevents people from achieving the highest level of health. Therefore, the Government has the authority to regulate to protect public health.

3 METHODOLOGY

This research is normative-juridical research (Marzuki, 2011). The type of research used is normative research which is oriented towards legal materials and documents that are relevant to this research. Normative legal research is legal research conducted by examining literature or secondary source (Liman: 2023) The research mainly uses 4 (four) approaches; philosophical approach, legislative approach, conceptual approach and comparative approach. A philosophical approach is used to
explore the nature of legal protection for children from smoking which harms their
development. Legislative Approach This is done by reviewing the laws and regulations
relating to the legal issue at hand. The conceptual approach is carried out by connecting
the legislative approach with several legal concepts related to the research issue.
Meanwhile, a comparative approach is used to compare cigarette regulations in a number
of countries with Indonesia.

The legal material for this research is divided into two; First, primary legal
materials, namely laws and regulations related to this research issue, including:

1. The 1945 Constitution of the Unitary State of the Republic of Indonesia post-
amendment;
2. Law Number 39 of 1999 concerning Human Rights;
3. Law Number 17 of 2016 concerning the Second Amendment to Law Number
23 of 2002 concerning Child Protection;
4. Law Number 17 of 2023 concerning Health;
5. Law Number 11 of 2005 concerning Ratification of the Economic and Social
Rights Convention;
6. Law Number 32 of 2002 concerning Broadcasting;
7. Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP);
8. Government Regulation Number 109 of 2012 concerning Safeguarding of
Materials Containing Addictive Substances in the Form of Tobacco Products for
Health;
9. Government Regulation Number 50 of 2005 concerning the Implementation of
Broadcasting by Private Broadcasting Institutions.
10. Presidential Decree (Keppres) Number 36 of 1996 concerning Ratification of
the International Convention on the Rights of the Child;
11. Regulation of the Minister of Health of the Republic of Indonesia Number 28
of 2013 concerning the Inclusion of Health Warnings and Health Information on
Tobacco Product Packaging;
12. Regulation of the Minister of Health of the Republic of Indonesia Number 40
of 2013 concerning Road Map for Controlling the Impact of Cigarette Consumption
on Health.
13. Minister of Trade Regulation Number 86 of 2017 concerning Provisions for
the Import of Electric Cigarettes;
14. Regulation of the Minister of Finance of the Republic of Indonesia Number 146/PMK.010/2017 concerning Excise Tariffs for Tobacco Products;
15. Other related laws and regulations.

Second, secondary legal materials in the form of library research obtained and collected from various documented sources; books, accredited scientific journals both national and international, popular scientific papers, newspapers and the internet, and other secondary sources related to research issues.

4 RESULTS AND DISCUSSION

According to R.A Koesnan (2015), children are young people at a young age in their soul and life journey as they are easily influenced by the circumstances around them. Sugiri and Gultom stated that as long as the process of growth and development is still going on in the physical body of the children, they are still considered as children, and will only become an adult when the growth process is completed. Children and teenagers seem to be surrounded by cigarettes. Examples of smoking behavior can easily be found around them, both by adults and fellow children. Not to mention the massive exposure to cigarette advertising that exposes children without realizing the dangers. This habit means that smoking is not considered a risky action for him. This trap is a form of indirect exploitation by the cigarette industry towards children under 18 years of age. Indirect exploitation by allowing children under the age of 18 to consume cigarettes for reasons of "market law". This indirect exploitation ensnares children under the age of 18 to become active smokers. This is proven by the still quite high number of smokers among children under 18 years of age.

When children become active smokers, there is evidence of the neglect of all elements of society. There are 939,434 Indonesian children aged 5-17 years who smoke tobacco, with 80 percent consuming it daily. This young population is a victim of the lack of protection from the state, society, family and cigarette industry corporations. Children who smoke are vulnerable to addiction and experience various health problems. Children whose family members smoke are also vulnerable to tengkes or stunting because

household expenses go to cigarettes, not nutritious food. This condition threatens the child's future (Kompas, 2019).

The results of data analysis from the National Socio-Economic Survey (Susenas) of the Central Statistics Agency (BPS) in the 2019-2021 period show that there are fluctuations in the percentage of children aged 5-17 years who smoke. In 2019, as many as 1.55 percent of children aged 5-17 years smoked and this increased in 2020 by 0.03 percent. Furthermore, this percentage decreased from 1.58 percent in 2020 to 1.51 percent in 2021.

![Figure 1: Fluctuations in smoking among children aged 15-17 years, 2019-2021](image1)

Source: National Socio-Economic Survey 2021

The 2021 Susenas data provides an overview of the condition of children aged 5-17 years who smoke based on the number of cigarettes smoked per week.

![Figure 2: Percentage of children smokers aged 5-17 per week in 2021](image2)

Source: National Socio-Economic Survey, BPS (2021)

The results of the analysis show that 34.88 percent of children smoke more than 60 cigarettes per week, followed by 29.64 percent who smoke 30-59 cigarettes per week. Meanwhile, as many as 18.84 percent of children smoke 15-29 cigarettes per week and as many as 13.23 percent of children smoke 7-14 cigarettes per week. The remaining 3.40 percent of children smoke 1-6 cigarettes within a week. This figure shows that children who smoke intensively every week are still very high (KPPA, 2022). However, based on
research results, intensive smoking can cause damage to the lungs, heart, blood clots, depression, excessive anxiety, damage to the reproductive system and premature menopause in women (Hasanah, 2014).

Still from the same source, the percentage of children aged 5-17 years who are active smokers in a number of provinces shows worrying figures. West Java is the province with the highest percentage of smokers for children aged 5-17 years, while the lowest percentage is held by East Kalimantan province.

Table 1: percentage of children aged 5-17 years who smoke by province, 2021

<table>
<thead>
<tr>
<th>Province</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aceh</td>
<td>0.65</td>
</tr>
<tr>
<td>North Sumatra</td>
<td>0.63</td>
</tr>
<tr>
<td>West Sumatra</td>
<td>1.19</td>
</tr>
<tr>
<td>Riau</td>
<td>0.90</td>
</tr>
<tr>
<td>Jambi</td>
<td>1.09</td>
</tr>
<tr>
<td>South Sumatra</td>
<td>1.79</td>
</tr>
<tr>
<td>Bengkulu</td>
<td>1.93</td>
</tr>
<tr>
<td>Lampung</td>
<td>1.64</td>
</tr>
<tr>
<td>Bangka Belitung Islands</td>
<td>1.36</td>
</tr>
<tr>
<td>Riau islands</td>
<td>0.71</td>
</tr>
<tr>
<td>DKI Jakarta</td>
<td>0.89</td>
</tr>
<tr>
<td><strong>West Java</strong></td>
<td><strong>2.08</strong></td>
</tr>
<tr>
<td>Central Java</td>
<td>1.91</td>
</tr>
<tr>
<td>In Yogyakarta</td>
<td>1.81</td>
</tr>
<tr>
<td>East Java</td>
<td>1.82</td>
</tr>
<tr>
<td>Banten</td>
<td>1.52</td>
</tr>
<tr>
<td>Bali</td>
<td>0.81</td>
</tr>
<tr>
<td>West Nusa Tenggara</td>
<td>2.28</td>
</tr>
<tr>
<td>East Nusa Tenggara</td>
<td>1.33</td>
</tr>
<tr>
<td>West Kalimantan</td>
<td>1.18</td>
</tr>
<tr>
<td>Central Kalimantan</td>
<td>1.12</td>
</tr>
<tr>
<td>South Kalimantan</td>
<td>1.20</td>
</tr>
<tr>
<td><strong>East Kalimantan</strong></td>
<td><strong>0.39</strong></td>
</tr>
<tr>
<td>North Kalimantan</td>
<td>0.60</td>
</tr>
<tr>
<td>North Sulawesi</td>
<td>0.88</td>
</tr>
<tr>
<td>Central Sulawesi</td>
<td>1.35</td>
</tr>
<tr>
<td>South Sulawesi</td>
<td>1.07</td>
</tr>
<tr>
<td>Southeast Sulawesi</td>
<td>1.06</td>
</tr>
<tr>
<td>Gorontalo</td>
<td>1.67</td>
</tr>
<tr>
<td>West Sulawesi</td>
<td>1.54</td>
</tr>
<tr>
<td>Maluku</td>
<td>0.59</td>
</tr>
<tr>
<td>North Maluku</td>
<td>0.90</td>
</tr>
<tr>
<td>West Papua</td>
<td>0.87</td>
</tr>
<tr>
<td>Papua</td>
<td>1.01</td>
</tr>
<tr>
<td><strong>Indonesia</strong></td>
<td><strong>1.51</strong></td>
</tr>
</tbody>
</table>


The survey also shows the percentage of smokers by children aged 5-17 years according to province, type of area and cigarettes smoked per week. The results show
quite worrying numbers, as cigarettes seem to have become a routine consumption of children every week. How they unknowingly put nicotine poison and other dangerous substances into their bodies.

Table 2: percentage of smokers by children aged 5-17 years according to province, type of area and cigarettes smoked per week.

<table>
<thead>
<tr>
<th>Province</th>
<th>1-6 stems</th>
<th>7-14 stems</th>
<th>15-29 stems</th>
<th>30-59 sticks</th>
<th>≥ 60 sticks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Urban</td>
<td>4.36</td>
<td>14.93</td>
<td>21.31</td>
<td>32.06</td>
<td>27.34</td>
</tr>
<tr>
<td>Rural</td>
<td>2.52</td>
<td>11.68</td>
<td>16.58</td>
<td>27.42</td>
<td>41.81</td>
</tr>
<tr>
<td>Urban and Rural</td>
<td>3.40</td>
<td>13.23</td>
<td>18.84</td>
<td>29.64</td>
<td>34.88</td>
</tr>
</tbody>
</table>


Every day, young people in Indonesia are exposed to tobacco in their homes, schools and communities. Being surrounded by tobacco advertisements and widespread cigarette butts is just one part of the problem. Through their own habits, young people's lives are also disrupted. Extensive tobacco use puts the future of children across Indonesia in grave danger. Tobacco is the second largest risk factor for premature death and disability in Indonesia. Every year, there are 600,000 premature deaths due to exposure to cigarette smoke, 28 percent of which are children. Non-communicable diseases linked to smoking have also placed a burden on public health funding in Indonesia (UNICEF, 2022).

5 DISCUSSION

In an effort to provide legal protection for children under the age of 18 from all things that endanger their survival and growth, including the dangers of cigarettes containing dangerous addictive substances, the legal norms in laws and regulations related to child protection, as well as policies related to it, are must contain the basic principles in legal protection and fulfillment of children's rights as stated in Article 2 of the Convention on the Rights of the Child which the Indonesian government adopted into the Child Protection Law (UU No. 23 of 2002 and its amendments), namely: 1) the principle of non-discrimination; 2) The best interests of the child (*the best interests of the child*); 3) The right to life, survival and development (*the right to life, survival and development*); and 4) Respect for *the views of the child*.

These four principles must always be the reference and basis for every norm formulation carried out by the government (central and regional) so that it can realize the State's commitment as a consequence of its binding to the Convention. In this sense, the
rights given to children must be fulfilled by the state, and the family is assisted by the wider community.

5.1 NON-DISCRIMINATION PRINCIPLE

People’s social interactions are governed not only by the law but also by religion, morality, ethics, etiquette, and other social standards (Ekowati, 2023). Discrimination according to the KBBI is interpreted as different treatment of fellow citizens based on skin color, class, ethnicity, economy, religion, and so on. The meaning of the principle of non-discrimination is that all rights recognized and contained in regulations must be applied to every child without any distinction (Supeno, 2010). In general, children need to be protected from: 1), emergencies or dangerous situations. 2), legal arbitrariness. 3), exploitation including acts of violence (abuse) and neglect, and 4), discrimination (Todress, 2007).

The principle of non-discrimination places everyone in an equal position, having the same rights and position. Humans have had the principle of non-discrimination since birth, so that the principle of non-discrimination has become an important concept in human rights law. This principle can also be found in various human rights instruments (Kholis, 2018).

Confirmation of the principle of non-discrimination is also clearly stated in the UDHR which states that every person has the right to all the rights and freedoms stated in this declaration and there must be no exceptions in any field, such as differences in ethnicity, race, gender, language, skin color, type of religion, property rights, political or other views, national or social origin, birth or other position.

The principle of non-discrimination is stated in various instruments, both at national, regional and international levels. On an international scale, provisions on the principle of non-discrimination are contained in the UN Charter, UDHR, International Covenant on Civil and Political Rights (SIPOL Covenant), International Covenant on Economic, Social and Cultural Rights (ECOSOB). Apart from that, the principle of non-discrimination is also found in the International Convention Concerning the Elimination of All Forms of Discrimination Against Women, the International Convention Concerning the Elimination of All Forms of Racial Discrimination, the Declaration Concerning the Elimination of All Forms of Intolerance and Discrimination Based on
Religion or Belief and the International Convention Concerning the Eradication and Punishment of Crimes of Discrimination. Skin Color (Apartheid) (Fadhli, 2014).

The emergence of the principle of non-discrimination in all human rights instruments shows that the main basis for the norms of international human rights instruments is the recognition of equality between people. The international human rights regime believes that the principle of non-discrimination must continue to be strengthened because the concept of equal rights between people in various countries is very diverse due to cultural, political, legal and societal character issues (Anisatul Hamidah, 2021).

In the Convention on the Rights of the Child, this principle is contained in Article 2 Paragraph (1) and Paragraph (2).

Paragraph (1):

“State parties respect and guarantee the rights set out in this convention for every child within their jurisdiction without discrimination in any form, regardless of race, color, sex, language, religion, political opinion or other views. other views, national, ethnic or social origins, ownership status, disability or not, birth or other status either of the child himself or of his legal guardian parents.”

Paragraph (2):

“State parties will take all necessary steps to ensure that children are protected from all discrimination or punishment based on the status, activities, opinions expressed or beliefs of the child's parents, legal guardians or members of their family.”

The principle of non-discrimination is based on the Child Protection Law, namely that every child has the right to live, grow, develop and participate appropriately in accordance with human dignity, and to receive protection from violence and discrimination. Article 28B Paragraph (2) of the 1945 Constitution of the Republic of Indonesia also emphasizes that every child has the right to survival, growth and development and the right to protection from violence and discrimination.

The statement of this article contains 2 (two) meanings: first. Fulfillment of rights ("to live, grow, develop and participate") must be fulfilled by the State through the right to health (Health Law), the right to education (SISDIKNAS Law), child welfare including child care (UU No. 4 of 1979 and Law No. 1 of 1974 concerning Marriage). 2. Protection from violence and discrimination which is fulfilled by the State in the form of norms through the Child Protection Law. Thus, the derivative legal/legislative system regarding
the implementation of child protection requires regulations regarding the prevention and handling of children from violence, exploitation, abuse and neglect in all situations of children's lives. The child's life situation includes: child care in a family/foster family/adoptive family/guardian/care in an orphanage, children's hostel, police detention, migration detention, prison, children's ward in a hospital, special clinic/special care, educational institutions, refugee camps and children in conflict situations (KPPA, 2019). So Article 19 of the Convention on the Rights of the Child requires participating States to take steps; (1) Administrative; (2) Legislative; (3) Social; and (4) Education to protect children from all forms of physical and mental violence, injury or abuse, neglect, abuse or exploitation.

In the context of legal protection for children from the dangers of cigarettes containing addictive substances which endanger children's health, growth and development and their future, the principle of non-discrimination should also be applied to the protection of children from exploitation by the cigarette business which targets children under the age of 18. Cigarette marketing distribution which often targets children under 18 years of age, although not openly, is a form of "indirect exploitation" of the cigarette industry towards children under 18 years of age. Child protection norms in the Convention on the Rights of the Child and the Child Protection Law must explicitly include the protection of children from the dangers of smoking.

5.2 PRINCIPLE OF BEST INTERESTS OF THE CHILD

The principle of the best interests of the child is one of the child protection principles stated in the Convention on the Rights of the Child. This principle is stated in Article 3 of the Convention on the Rights of the Child which states in full as follows:

Paragraph (1):

In all actions concerning children, carried out by state or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be the primary consideration.

Paragraph (2):

States Parties undertake to ensure the protection and care of the child as is necessary for his well-being, taking into account the rights and obligations of his parents, legal guardians or other persons legally over him, and for this purpose, shall take all appropriate legislative and administrative measures.
Paragraph (3).

States Parties must ensure that the various institutions, services and facilities responsible for the care and protection of children conform to the standards determined by the competent authorities, especially in the areas of safety, health, numbers and suitability, staff, they and also supervisory authorities.

The Convention on the Rights of the Child strongly emphasizes that in all actions concerning children carried out by government and social welfare institutions, judicial institutions, government agencies or legislative bodies, the best interests of the child must be the main consideration. Article 3 Paragraph (1) of the Convention on the Rights of the Child provides the basis for every development implementation from planning, implementation, financing and evaluation to always pay attention to the relationship between development and activities with the best interests of children.

The Convention on the Rights of the Child does not formulate a definition of the best interests of the child, but a number of references mention this principle in relation to the physical, mental, moral, spiritual and social development of children. The Committee on Children's Rights has repeatedly emphasized that the best interests of children must be the primary consideration in all actions related to children. This principle departs from the condition of children whose physical and psychological maturity is different from that of adults. Children are still in the process of demanding that their emotional and special educational needs be met. Thus, the level of error for children in conflict with the law is considered lower than that of adults.

The principle of the best interests of children also has consequences for a number of state obligations. Legislative, administrative and judicial bodies are obliged to make the interests of children the main consideration before making decisions. This means that there must be an analysis of the direct and indirect impact of the policy on children in every policy making (UNCRC, 2003). Including in the law enforcement process, the interests of children must overcome the institutional interests of police, prosecutors, judges or state institutions.

(John Eekelaar, 1992) Consider that “best interests” can be defined as:

“…………..basic interests, for example to physical, emotional and intellectual care developmental interests, to enter adulthood as far as possible without disadvantage; autonomy of interests, especially the freedom to choose a lifestyle of their own”. (basic interests, such as the importance of caring for a child's physical, emotional and intellectual development until they enter
For some people, 'best interests' can be interpreted as simply fulfilling the physical and material needs of the child, where poverty and living homeless are certainly interpreted as not fulfilling the child's best interests. For some people, the child's best interests are emphasized on the child's psychological emotional aspects, where the child feels safe and protected. (KPPA, 2019)

5.3 PRINCIPLES OF CHILD SURVIVAL AND DEVELOPMENT

The 1945 Constitution of the Republic of Indonesia, Article 28B Paragraph (2), mandates that every child has the right to survival, growth and development and the right to protection from violence and discrimination. The principles of survival and development are closely related to the right to life as a human right. The right to life is such an important right that it is placed as an initial discussion before setting out other rights. This can be seen from the placement of the articles regarding the recognition of the right to life at the beginning of the two main instruments of international human rights law, namely the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Based on the UN Convention on the Rights of the Child, conceptually there is no separation between the right to life and the right to survival of the child and the right to growth and development of the child which is formulated in one article and paragraph at the same time. In fact, the recognition of the child's right to life will be reinforced by the recognition of the right to survival and the right to growth and development. Moreover, the integration between the child's right to life, the child's right to survival and the right to grow and the child's development, the state shall ensure with all the maximum possible efforts made by the state (the maximum extent possible the survival and development), as regulated in the provisions of Article 6 Paragraph 1 and Paragraph 2 of the Convention on the Rights of the Child (CRS) which reads as follows,

"State Parties recognize that every child has the inherent right to life; State Parties shall ensure to the maximum extent possible the survival and development."

In terms of national and state life, children are the future of the nation and the next generation of the nation's ideals, so that every child has the right to survival, growth and
development, participation and the right to protection from acts of violence and discrimination as well as civil rights and freedoms. Based on this principle, every child has an inherent right to life and the state is obliged to guarantee the child's survival and development to the maximum extent.

In the great theory of human rights, the right to live and continue living is a human right that cannot be reduced under any circumstances (non-derogable right). Therefore, as children of humanity, children's right to live and live must also be affirmed. This is important because children have a weaker position than adults so they really need to be protected. The right to life, survival and development of children is interpreted as guaranteeing the right to life, survival and development of children to the maximum extent possible (UNICEF, 2009).

In the Child Protection Law, what is meant by the principles of the right to life, survival and development are the most basic human rights for children which are protected by the state, government, society, family and parents. Parents, families and communities are responsible for safeguarding and maintaining these human rights in accordance with the obligations imposed by law. Likewise, in the context of implementing child protection, the state and government are responsible for providing facilities and accessibility for children, especially in ensuring optimal and directed growth and development. In terms of national and state life, children are the future of the nation and the next generation of the nation's ideals, so that every child has the right to survival, growth and development, participation and the right to protection from acts of violence and discrimination as well as civil rights and freedoms.

The results of the 2020-2023 Interim Population Projection show that the number of children (aged 0-17 years) in Indonesia in 2021 will be 79,486,424 people or 29.15 percent of the total population. East Nusa Tenggara Province is the province with the highest percentage of children, namely 34.87 percent. Meanwhile, the lowest percentage of the child population is in the Yogyakarta Special Region Province, namely 24.49 percent (KPPA, 2023). These children are obliged to receive legal protection from the State, to maintain their survival and growth and development. Protection from the distribution of cigarettes containing nicotine which are sold freely on the market is a phenomenon that is very dangerous for the survival and growth and development of children.
So Article 20 of the Child Protection Law places the responsibility for child protection on; The State, Government, Regional Government, Community, Family, and Parents or Guardians are obliged and responsible for the implementation of Child Protection. Children from the perspective of national and state life are the future of the nation and the next generation of the nation's ideals, so that the state is obliged to fulfill the rights of every child on survival, growth and development, participation, protection from acts of violence and discrimination.

So with this protection, it is hoped that children will have the potential to play an active role, safeguarding the preservation of national life based on noble values. Children can grow and develop naturally and well, so it is necessary to pay attention to environmental conditions that influence the child's mental development. Children will not be able to develop well if there is no stimulation from their environment, likewise children can become good if the environment always presents the child with the best things. You can imagine what would happen in the future if children as the nation's buds who are expected to be the successors of the nation's ideals in continuing the ideals of development cannot develop properly. The future of a nation is largely determined by the quality of life of its children. A nation will become a great nation if they can provide proper protection to their generation from an early age. They are children who need protection, love and physical and spiritual well-being from the time they are in the womb (Anggaraini, 2020).

5.4 PRINCIPLE OF RESPECT FOR CHILDREN'S OPINIONS

In a number of situations, children are often treated wrongly, subjected to violence either from family, society or other parties. Others are exploited economically, even sexually and traded like commodities. In such situations, children's opinions are not respected or even harassed. So that it affects their right to develop and live a life according to their potential. So respect for children's opinions is respect for children's rights to participate and express their opinions in decision making, especially when it concerns matters that affect their lives.

Respect for children's opinions is one of the principles of child protection stated in Article 12 of the Convention on the Rights of the Child. This article states in full as follows:

Paragraph (1):
States Parties shall guarantee to children who are capable of forming their own opinions the right to express those opinions freely in all matters affecting the child, with the child's opinions being given due weight in accordance with the child's age and maturity.

Paragraph (2):

For this purpose, the child must in particular be given the opportunity to have his opinion heard in judicial and administrative proceedings affecting the child, either directly, or through a representative or appropriate body, in a manner that complies with the procedural rules of national law.

In the Convention on the Rights of the Child, there is a value of respecting children's rights to participate and express their opinions in decision making in accordance with the child's age and level of intelligence, especially when it concerns matters that affect their lives. The principle aims to ensure that children's opinions are given the same weight as adults' opinions and must be taken into account in every decision making that impacts children, especially when it concerns matters that affect their lives. In general, this principle confirms that children have personality autonomy. So they should not be seen in a weak position. The principle of the convention on children's rights emphasizes that children have experiences, desires, imaginations, obsessions and aspirations that need to be heard.

6 CONCLUSION

Philosophically and sociologically, children are an inseparable part of human survival and the sustainability of a nation and state. In order to be able to take responsibility for the sustainability of the nation and state, every child needs to have the widest possible opportunity to grow and develop optimally, both physically, mentally and socially. For this reason, it is necessary to make protective efforts to realize the welfare of children by providing guarantees for the fulfillment of their rights without discriminatory treatment. The essence of legal protection for children under the age of 18 from the threat of dangerous addictive substances contained in cigarette products from the perspective of child protection law and the Child Rights Covenant is in accordance with the basic principles of children's rights in the Child Protection Law and the Child Rights Covenant, namely; the principle of non-discrimination, the principle of the best interests of children, the principle of child survival and development, and the principle of respect for children's opinions.
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