

Consumer Protection for Cigarette Products That Do Not Include Health Warnings in the Form of Images in the Concept of Legal Certainty

Mahardhika Jordan¹⁾ & Bambang Tri Bawono²⁾

¹⁾Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia, E-mail: jordanmahardhika@gmail.com

²⁾Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia, E-mail: BambangTriBawono.std@unissula.ac.id

Abstract. *Cigarettes in Indonesia are no longer foreign objects for consumption, but have become a habit for people to consume cigarettes. Some people have even made cigarettes a necessity of life that cannot be left behind in everyday life. Therefore, regarding cigarette production in Indonesia, every business actor is obliged to provide clear information by mandatory including a health warning on every pack of cigarettes they produce as a warning to cigarette consumers as stated in article 7 letter b of Law Number 8 of the Year 1999 concerning Consumer Protection (UUPK). The approach method used in this research is a normative juridical approach which places law as a system of norms. The norm system in question is about the principles, norms, rules of statutory regulations, court decisions, agreements and doctrines (teachings) related to the protection of consumers against cigarette products without health warning labels and health information in the form of images in the concept of legal certainty. Consumer protection in Indonesia is currently generally based on Law Number 8 of 1999 concerning Consumer Protection ("UUPK"). Specifically regarding protection for cigarette users, we can find the regulations in Government Regulation Number 109 of 2012 concerning Safeguarding of Materials Containing Addictive Substances in the Form of Tobacco Products for Health (PP 109/2012) and 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. A form of legal protection for cigarette consumers is the inclusion of a health warning label in the form of an image, which in fact is one of the consumer's rights to obtain information regarding the cigarettes they are using for their safety. Cigarette business actors who do not include health warnings on cigarette packaging must be held accountable for their actions. The principle of responsibility used in the Consumer Protection Law is the*

principle of absolute responsibility, namely the principle of responsibility for unlawful acts that are not based on fault.

Keywords: *Cigarettes; Consumer; Health; Protection; Warnings.*

1. Introduction

The basic demands of human life include food, clothing and shelter, which then grow and develop with various other demands of life. One of the demands of human life that is pleasurable is to utilize tobacco or is now widely known as smoking. This activity has started since Columbus landed on the American continent in 1518, namely when the Indians smoked tobacco. Tobacco cultivation also began to develop widely, penetrating the borders of other countries, including Indonesia.¹

Cigarettes in Indonesia are no longer foreign objects to consume, but have become a habit of society to consume cigarettes. Some people have even made cigarettes a necessity that cannot be abandoned in everyday life. Cigarettes have become a very large commodity in Indonesia, because consumers and cigarette lovers in Indonesia are very fantastic in number. Therefore, for cigarette production in Indonesia, every business actor is required to provide clear information by including health warnings on every pack of cigarettes they produce as a warning to cigarette consumers as stated in article 7 letter b of Law Number 8 of 1999 concerning Consumer Protection (UUPK) which reads:²

"The obligation of business actors is to provide correct, clear and honest information regarding the condition and guarantee of goods and/or services and to provide an explanation of use, repair and maintenance."

The obligation of cigarette business actors to include or include health warnings is also regulated in Article 150 of Law Number 17 of 2023 concerning Health, which also states that:³

Article 150

(1) Every person who produces, imports into the territory of the Republic of Indonesia, and/or distributes addictive substances in the form of tobacco products and/or electronic cigarettes as referred to in Article 149 paragraph (3) is required to include a health warning.

(2) The health warnings referred to in paragraph (1) are in the form of writing accompanied by pictures.

¹Aiman Husaini, *Repentance from Smoking: Secrets and Effective Ways to Stop Smoking* (1st ed.; Depok: Pustaka Iman, 2006), p. 15.

²Article 7 letter b of Law Number 8 of 1999 concerning Consumer Protection

³Article 150 of Law Number 17 of 2023 concerning Health

Regarding the inclusion of health warnings on cigarette packaging, this is the domain or authority of the Ministry of Health of the Republic of Indonesia, where the Ministry of Health has issued Regulation of the Minister of Health of the Republic of Indonesia Number 28 of 2013 which has been amended by Regulation of the Minister of Health of the Republic of Indonesia Number 56 of 2017 concerning Amendments to Regulation of the Minister of Health Number 28 of 2013 concerning the Inclusion of Health Warnings and Health Information on Tobacco Product Packaging. That in Article 3 paragraph (1) of Regulation of the Minister of Health of the Republic of Indonesia Number 56 of 2017 above states that:⁴

“Any person who produces and/or imports tobacco products into the territory of Indonesia is required to include a Health Warning on the smallest and larger packaging of Tobacco Products.”

The term "health warning" referred to in this provision is of course clear and easy-to-read writing and can be accompanied by images or other forms. Violations of the obligation that requires business actors in producing and/or importing and distributing cigarettes in Indonesia to include health warnings are expressly regulated in Article 437 Paragraph (1) of Law Number 17 of 2023 concerning Health which reads:⁵

Article 437

(1) Any person who produces, imports cigarettes into the territory of the Republic of Indonesia, and/or distributes them without including a written health warning accompanied by a picture as referred to in Article 150 shall be punished with imprisonment for a maximum of 5 (five) years or a maximum fine of IDR 500,000,000.00 (five hundred million rupiah).

This obligation of business actors is one of the consumer protection efforts. So if at any time there is a problem with a product used by consumers, business actors must be responsible for the products they issue, because if seen the position of consumers is in a weak position, consumers are certainly used as objects of business activities to reap the greatest possible profit by business actors through various promotions, sales methods, and the implementation of standard agreements that will later harm consumers.⁶Consumer protection is an integral aspect of a healthy business, where balanced legal protection between

⁴Regulation of the Minister of Health of the Republic of Indonesia Number 56 of 2017 Concerning Amendments to Regulation of the Minister of Health Number 28 of 2013 Concerning the Inclusion of Health Warnings and Health Information on Tobacco Product Packaging

⁵Article 437 Paragraph (1) of Law Number 17 of 2023 concerning Health

⁶Zulham, Consumer Protection Law, (Jakarta: Prenadamedia Group, 2016), p. 11.

producers and consumers is an important factor. The imbalance of legal protection can have a negative impact on consumers, both as a result of unfair legal relations between producers and consumers and violations of the law committed by producers. Therefore, the importance of consumer protection in maintaining consumer interests and realizing justice in business relationships.⁷

The increasing lifestyle of today's society greatly influences cigarette consumption patterns, while knowledge of choosing and using a cigarette product appropriately, correctly and safely is still inadequate, while advertising and promotion are aggressively encouraging consumers to consume cigarettes excessively and sometimes irrationally. This is what increases the broad risk of consumer health and safety. Therefore, the government continues to strive to protect cigarette consumers.

A journal in England once said that reducing the number of smokers in the world by 20% (twenty percent) before 2020 could prevent one hundred million deaths from tobacco. However, the reality is that cigarettes are one of the country's assets that are quite large for the Indonesian nation, it is incalculable how much financial contribution goes into the Indonesian state treasury from this one business. So besides being dangerous for health, cigarettes are also an alternative for public welfare, for example opening up large employment opportunities and the level of farmer welfare can be met with tobacco farming.⁸

The government has tried to make various efforts to raise public awareness of the dangers of smoking, namely by issuing Government Regulation Number 109 of 2012 concerning the Protection of Materials Containing Addictive Substances in the Form of Tobacco Products for Health, then the Decree of the Head of BPOM RI concerning the Implementation of Supervision of Circulating Cigarette Products and Advertisements. This is intended to protect the public or consumers who use cigarettes from information on product labels or packaging including advertisements and promotions that are incorrect, detrimental, and misleading.

Cigarette packaging that does not include health warnings distributed by business actors to consumers is certainly very detrimental to the community as consumers, where they lack information about the dangers of using cigarettes for their health. The attitude of business actors selling cigarettes who do not include health warning labels on the packaging has violated consumer rights, namely Article 4 paragraph (3) of Law Number 8 of 1999 concerning Consumer Protection relating to information on a product, in this case cigarettes. The weak position of consumers is often exploited by business actors to obtain maximum

⁷Syahrul Kurniawan, Arpangi, Legal Protection for Consumers in E-Commerce Buying and Selling Transactions, Sultan Agung Scientific Journal, Sultan Agung Islamic University, Semarang, September 19, 2023, p. 52

⁸Suryo Sukendro, "The Philosophy of Smoking", 2nd Edition, (Yogyakarta: Pinus Book Publisher, 2014), page 60.

profit from consumers. Factors of consumer ignorance, unclear information on goods/services provided by business actors.⁹

The policy of including health warnings and health information in the form of images on cigarette packs is regulated in the Regulation of the Minister of Health of the Republic of Indonesia Number 56 of 2017 concerning Amendments to the Regulation of the Minister of Health Number 28 of 2013 concerning the Inclusion of Health Warnings and Health Information on Tobacco Product Packaging. The Minister of Health Regulation explains in detail the inclusion of health warnings and health information on tobacco product packaging, including the requirements for including the intended health warnings and information, including the type, size and color of the image, how to write it, and where it is placed. This aims to provide information and prevent consumers from smoking habits, by seeing scary images on cigarette packaging, smokers are also expected to be motivated to quit smoking.

Regulation of the Minister of Health of the Republic of Indonesia Number 56 of 2017 Concerning the Inclusion of Health Warnings and Health Information on Tobacco Product Packaging stipulates 5 (five) types of images and texts of health warnings that differ from each other, including: a) Mouth Cancer, b) Blackened Lungs Due to Cancer, c) Throat Cancer, d) People Suffering from Lung Cancer and Larynx Cancer, e) Throat Cancer.¹⁰

Beginner smokers consider pictorial health warnings of the dangers of smoking on cigarette packs as a stimulus to be responded to. There are two possible attitudes that will emerge in smokers, namely smokers will have a positive attitude towards pictorial warnings of the dangers of smoking on cigarette packs so that they are aware that the cigarettes they smoke will be dangerous for themselves or they will have a negative attitude towards pictorial warnings of the dangers of smoking on cigarette packs by ignoring the bad effects of the cigarettes they smoke.

Without clear information, fraud can occur. The right to this information is very important, inadequate information can also be a form of product defect due to inadequate information. The lack of government socialization to the public regarding the Consumer Protection Act has resulted in a lack of legal awareness for business actors. Consumers also do not clearly understand what their rights and obligations are as consumers, what the responsibilities of business actors are and with whom the consumer is related to the law.

The author's discussion in this case is based on Law Number 8 of 1999 concerning Consumer Protection, Law Number 17 of 2003 concerning Health,

⁹Sukarmi, Consumer Legal Protection in Online Transactions, Unissula Law Journal Vol.35 No. 1 (2019), pp. 80-81

¹⁰Regulation of the Minister of Health of the Republic of Indonesia Number 56 of 2017 Concerning Amendments to Regulation of the Minister of Health Number 28 of 2013 Concerning the Inclusion of Health Warnings and Health Information on Tobacco Product Packaging

Government Regulation Number 109 of 2012 concerning the Protection of Materials Containing Addictive Substances in the Form of Tobacco Products for Health, Regulation of the Minister of Health of the Republic of Indonesia Number 56 of 2017 concerning Amendments to the Regulation of the Minister of Health Number 28 of 2013 concerning the Inclusion of Health Warnings and Health Information on Tobacco Product Packaging, where the four regulations above firmly state that cigarettes that do not have health warnings on the packaging are very detrimental to consumers because consumers lack information about the dangers of using these cigarettes. However, of the four laws and regulations that have been explained above, the author only focuses on Article 4 paragraph (3) of Law Number 8 of 1999 concerning Consumer Protection, because the author focuses on upholding consumer rights which in this case are harmed by business actors who do not pay attention to the applicable laws and regulations.

Based on the description above, The author is interested in further research regarding How is consumer protection for cigarette products without health warning labels and health information in the form of images in the concept of legal certainty and how are business actors responsible for cigarettes that do not include health warning labels and health information in the form of images on the packaging.

2. Research methods

The approach method used in this study is the normative legal approach. The normative legal approach is a legal research conducted by examining library materials or secondary data as basic materials for research by conducting a search for regulations and literature related to the problems being studied.¹¹The type of research used in completing this thesis is descriptive analysis research, namely literature study as secondary data, then discussing, listening to and comparing conceptually with statutory regulations. The data obtained from this research will be processed and analyzed using qualitative analysis, namely giving meaning and interpreting each data, after being processed it is then manifested in the form of sentences systematically to draw a conclusion.

3. Results and Discussion

3.1. Consumer Protection Against Cigarette Products That Do Not Include Health Warning Labels and Health Information in the Form of Images in the Concept of Legal Certainty

Indonesian people understand the many negative things that can be obtained from smoking (such as cancer, nervous disorders, stomach acid, and psychological disorders), but still Indonesian people do not feel haunted by it. This smoking habit can arouse a sense of temporary pleasure for its users, but on the other hand, those around the user can also be affected by the bad effects of

¹¹Soerjono Soekanto & Sri Mamudji, Normative Legal Research (A Brief Review), Jakarta, Rajawali Pers, pp. 13-14

the smoker. In general, smokers can be categorized into two types (passive smokers and active smokers), what is meant by passive smokers is cigarette smoke that is inhaled indirectly by people who do not smoke while active smokers are cigarette smoke that is directly inhaled by the smoker.¹²

The temporary pleasure effect caused by cigarettes or nicotine, results in dependence or addiction to the product which then makes active smokers difficult to give up the smoking habit which is clearly known to have harmful effects on body health ranging from oral cancer, damage to oral tissue, brain nerves to psychological disorders. This is one of the important reasons for the protection of cigarette consumers.

Indonesia is a country of law where various things are regulated by law including consumers. In relation to legal protection, CST Kansil explained that legal protection as all legal efforts must be provided by law enforcement officers in order to provide a sense of security, both mentally and physically from disturbances and various threats from any party.¹³

Satijipto Raharjo's legal protection theory explains that legal protection provides protection for human rights (HAM) that are harmed by other people and this protection is given to society so that they can enjoy all the rights granted by law.¹⁴ Satijipto Raharjo explains that legal protection is providing protection for human rights that are harmed by other people and this protection is given to the community so that they can enjoy all the rights granted by law.

The current regulations on consumer protection law in Indonesia are generally based on Law Number 8 of 1999 concerning Consumer Protection ("UUPK"). Specifically regarding protection for cigarette users, we can find the regulations in Government Regulation Number 109 of 2012 concerning the Protection of Materials Containing Addictive Substances in the Form of Tobacco Products for Health (PP 109/2012) and 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. The Consumer Protection Law has essentially provided equal standing for consumers with business actors, but the concept of consumer protection as a necessity must always be socialized to create a relationship between consumers and business actors with the principle of fair equality.¹⁵

Legal protection for consumers is protection of dignity and honor, as well as recognition of human rights held by consumers based on legal

¹²Rohmani A. "Electric Cigarettes and Conventional Cigarettes Damage Lung Alveoli". *Brawijaya Medical Journal*, 21, No. 3, (2016), p.12.

¹³CST Kansil, *Introduction to Indonesian Law and Legal System*, (Jakarta: Balai Pustaka Jakarta 1989), p. 40

¹⁴Satijipto Raharjo, "Legal Science", (Bandung: PT. Citra Aditya Bakti, 2000), p. 53.

¹⁵Rusnaldi Salim, *Consumer Protection in Bankruptcy*, *Unissula Law Journal* Volume 36 No. 1, June 2021, p. 27

provisions.¹⁶Article 1 number 1 of Law Number 8 of 1999 concerning Consumer Protection states that: "Consumer protection is all efforts that guarantee legal certainty to provide protection to consumers."

Legal protection is a form of mandatory service

provided by the government to provide a sense of security to every citizen

society. In relation to consumers, the UUPK regulates consumer rights that must be protected, which are stated in Article 4 of the UUPK as follows:

1. *The right to comfort, security and safety in consuming goods and/or services.*
2. *The right to choose goods and/or services and to obtain said goods and/or services in accordance with the exchange value and conditions and guarantees promised.*
3. *The right to correct, clear and honest information regarding the condition and guarantee of goods and/or services.*
4. *The right to have opinions and complaints heard regarding the goods and/or services used.*
5. *The right to receive advocacy, protection and appropriate efforts to resolve consumer protection disputes.*
6. *The right to receive consumer guidance and education.*
7. *The right to be treated or served properly and honestly and without discrimination.*
8. *The right to receive compensation, damages and/or replacement, if the goods and/or services received do not comply with the agreement or are not as they should be.*
9. *Rights regulated in statutory provisions other.*

Based on the explanation of Law Number 8 of 1999 concerning Consumer Protection above, smokers or cigarette users as consumers have the right to obtain legal protection for their rights that have been violated. In relation to the decision that the author raised in this study, the consumer rights that were violated were Article 4 paragraph (3) which states that "the right to correct, clear, and honest information regarding the condition and guarantee of goods and/or services". Because business actors have distributed cigarettes that do not include health warning labels on cigarette packaging, they have violated consumer rights. Because consumers have the right to correct, clear, and honest information related to the goods to be used, namely cigarettes. In addition to violating the Consumer Protection Law, the actions carried out by cigarette

¹⁶Setyawati, Desy Ary, Dahlan Ali, and M. Nur Rasyid. "Protection of Consumer Rights and Responsibilities of Business Actors in Electronic Transaction Agreements." *Syiah Kuala Law Journal* 1, No. 3 (2017): 46-64. p. 36.

business actors who do not include health warning labels on the packaging also violate other laws and regulations.

Cigarettes circulating in the territory of Indonesia are required to include a health warning label in the form of an image on the cigarette packaging, which is stated in the 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 in Article 3 paragraph (1) which states that:

“Any person who produces and/or imports tobacco products into the territory of Indonesia is required to include a Health Warning on the smallest and larger packaging of Tobacco Products.”

Violations of the obligation that requires business actors producing and/or importing and distributing cigarettes in Indonesia to include health warnings are expressly regulated in Article 437 Paragraph (1) of Law Number 17 of 2023 concerning Health, which reads:¹⁷

Article 437

Any person who produces, imports cigarettes into the territory of the Republic of Indonesia, and/or distributes them without including a written health warning accompanied by a picture as referred to in Article 150 shall be punished with imprisonment for a maximum of 5 (five) years or a maximum fine of IDR 500,000,000.00 (five hundred million rupiah).

This obligation of business actors is one of the consumer protection efforts. So if at any time there is a problem with a product used by consumers, business actors must be responsible for the products they issue, because if seen the position of consumers is in a weak position, consumers are certainly used as objects of business activities to reap the greatest possible profit by business actors through various promotions, sales methods, and the implementation of standard agreements that will later harm consumers.¹⁸ Sidharta explained that in general, basic consumer rights are divided into 4 (four), namely:¹⁹

- 1) The Right to Safety.
- 2) The Right to Be Informed.
- 3) The Right to Choose.
- 4) The Right to Be Heard.

¹⁷Article 437 Paragraph (1) of Law Number 17 of 2023 concerning Health

¹⁸Ahmadi Miru & Sutarman Yodo, Consumer Protection Law, 6th ed., (Jakarta: PT Rajagrafindo Persada, 2010), p. 41.

¹⁹Joshua Renaldo, Standard Regulation of Cigarette Products as a Form of Implementation of the Consumer Protection Law, Jurnal Education And Development, Vol. 8 No. 2, May 2020 Edition, p. 150

The right to information is very important, because inadequate information provided to consumers can also be a form of product defect, namely what is known as instruction defect or defect due to inadequate information. The right to clear and correct information is intended so that consumers can get a correct picture of a product, because with this information, consumers can choose the desired product or according to their needs and avoid losses due to errors in product use.²⁰

The information that is the consumer right includes the benefits of product use, side effects of product use, expiration date, and the identity of the manufacturer of the product. This information can be conveyed either verbally or in writing, either by including it on the label attached to the product packaging, or through advertisements delivered by the manufacturer, either through print media or electronic media. The importance of conveying correct information to consumers about a product, so that consumers do not misunderstand the description of a particular product. The delivery of information to consumers can be in the form of representations, warnings, or instructions.

This warning is as important as the instructions for use of a product which is information for consumers, although both have different functions, namely that the instructions are primarily calculated to ensure the efficient use of the product, while the warning is designed to ensure the safety of the use of the product.²¹

Information related to labeled cigarettes is information about which must include health warnings. With the existence of health warning information, consumers get a clear picture of the effects of the labeled cigarette product. Thus, consumers of labeled cigarettes and those with health warnings have the right to comfort, security, and safety in consuming labeled cigarettes and have the right to correct, clear, and honest information about the conditions and guarantees of labeled cigarettes.

The obligation to produce and/or import and distribute cigarettes in Indonesia must include health warnings, which is expressly regulated in Article 437 Paragraph (1) of Law Number 17 of 2023 concerning Health, which clearly states that business actors who...producing, importing cigarettes into the territory of the Republic of Indonesia, and/or distributing them without including a written health warning accompanied by a picture will be punished with a maximum imprisonment of 5 (five) years or a maximum fine of IDR 500,000,000.00 (five hundred million rupiah).

Law Number 8 of 1999 concerning Consumer Protection explains in Article 8 letters i and j regarding prohibited acts for business actors, where the article expressly prohibits business actors as follows:

²⁰Ahmadi Miru & Sutarman Yodo, *Consumer Protection Law*, 6th ed., (Jakarta: PT Rajagrafindo Persada, 2010), p. 41.

²¹Ibid, p. 55

- 1) *Not attaching labels or making product descriptions containing the product name, size, net weight/contents, composition, usage instructions, date of manufacture, side effects, name and address of the business actor and other information for use which according to the provisions must be attached/made;*
- 2) *Not including information and/or instructions for use of the goods in Indonesian in accordance with applicable laws and regulations."*

Thus, business actors are prohibited from not including Labels containing health information about the use and side effects of a product. In this case, if the business actor commits a prohibited act as regulated in Article 8 letter (i) and letter (j) of Law Number 8 of 1999, namely not including Labels on cigarettes containing information in the form of warnings about health or side effects of labeled cigarette products. Then they will be subject to sanctions as regulated in Article 62 of Law Number 8 of 1999 concerning Consumer Protection which regulates the following:

- (1) *Business actors who violate the provisions as referred to in Article 8, Article 9, Article 10, Article 13 paragraph (2), Article 15, Article 17 paragraph (1) letter a, letter b, letter c, letter e, paragraph (2) and Article 18 shall be punished with imprisonment for a maximum of 5 (five) years or a maximum fine of IDR 2,000,000,000.00 (two billion rupiah).*
- (2) *Business actors who violate the provisions as referred to in Article 11, Article 12, Article 13 paragraph (1), Article 14, Article 16, and Article 17 paragraph (1) letters d and f shall be subject to a maximum imprisonment of 2 (two) years or a maximum fine of IDR 500,000,000.00 (five hundred million rupiah).*
- (3) *"For violations that result in serious injury, serious illness, permanent disability or death, the applicable criminal provisions shall apply."*

Thus, if a business actor does not include a label containing information about the use and side effects of a product as regulated in Article 8 of Law Number 8 of 1999 concerning Consumer Protection, then the business actor may be subject to sanctions as regulated in Article 62 paragraph (1) of Law Number 8 of 1999 with sanctions in the form of imprisonment for a maximum of 5 (five) years or a maximum fine of IDR 2,000,000,000.00 (two billion rupiah).

The existence of regulations that regulate and provide protection and can realize consumer rights against cigarettes that do not include labels or health warnings in the form of images or writing is an instrument of legal protection provided by the government. So this is in accordance with the theory of legal protection put forward by Satjipto Raharjo where legal protection is provide protection for human rights (HAM) that are harmed by others and this protection is given to the community so that they can enjoy all the rights granted by law.

The existence of legal instruments for the protection of cigarette consumers which are stated in Law Number 8 of 1999 concerning Consumer Protection ("UUPK") and Government Regulation Number 109 of 2012 concerning the

Protection of Materials Containing Addictive Substances in the Form of Tobacco Products for Health (PP 109/2012) and 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 have provided protection and realized consumer rights regarding cigarette products without labels and health warnings in the form of images or writing.

3.2. Business Actors' Responsibility for Cigarettes That Do Not Include Health Warning Labels and Health Information in the Form of Images on the Packaging

Business actors who have violated the provisions of tobacco products, especially one of which is by not including clear health warnings, as regulated in Article 14 paragraph (1) of Government Regulation Number 109 of 2012 concerning the Protection of Materials Containing Addictive Substances in the Form of Tobacco Products for Health. Where the health warning referred to in paragraph (1) is a warning in the form of images and writing that must have one meaning. Therefore, in this case, legal sanctions can be given in the form of administrative sanctions in accordance with the provisions of Article 60 paragraph (3) in the form of: "written warnings, verbal warnings, product withdrawals, recommendations for temporary suspension of activities; and/or, recommendations for action to related agencies in accordance with the provisions of laws and regulations."

Health warning labels and health information in the form of images on packaging are regulated in the Regulation of the Minister of Health of the Republic of Indonesia Number 56 of 2017 which regulates the inclusion of warnings about the dangers of smoking which differ from one another, including:²²

a. Figure 1 Oral Cancer



b. Figure 2 Blackened Lungs Due to Cancer

²²Regulation of the Minister of Health of the Republic of Indonesia Number 56 of 2017 Concerning Amendments to Regulation of the Minister of Health Number 28 of 2013 Concerning the Inclusion of Health Warnings and Health Information on Tobacco Product Packaging



c. **Figure 3 Throat Cancer**



d. **Figure 4 People Suffering from Lung Cancer and Larynx Cancer**



e. **Figure 5 Throat Cancer**



Business actors who do not include health warning labels and health information in the form of images on the packaging are usually business actors who take goods from abroad or can be called cigarette importers. If you look at the business actors listed in Article 1 number (3) of the Consumer Protection Law, it is explained that:

"A business actor is any individual or business entity, whether in the form of a legal entity or not, which is established and

domiciled or carries out activities within the jurisdiction of the Republic of Indonesia, either alone or together through an agreement to carry out activities in various economic fields."

The mistake of cigarettes that do not include health warning labels in the form of images on the packaging is inseparable from the role of business actors who distribute the cigarettes. In connection with the UUPK which contains the rights and obligations of the business actors themselves. The rights of business actors as regulated in Article 6 of Law Number 8 of 1999 are as follows:

- a. The right to receive payment in accordance with the agreement regarding the conditions and exchange value of the goods and/or services traded.*
- b. The right to receive legal protection from consumer actions that are in bad faith.*
- c. The right to defend oneself is appropriate in the legal settlement of consumer disputes.*
- d. The right to rehabilitation of good name if it is legally proven that the consumer's loss was not caused by the goods and/or services traded.*
- e. Rights regulated in other statutory provisions.*

The facts in the field can be seen that consumers and business actors have a relationship of mutual dependence and need each other so that the position of consumers and business actors should be in a balanced condition. However, in reality, the position of consumers is often in a weak position or position when compared to the position of business actors.²³

Accountability of business actors against cigarettes that do not include health warning labels and health information in the form of images on the packaging has been regulated in Law Number 8 of 1999 concerning Consumer Protection, namely by imposing sanctions on parties who do not include a label containing health warning labels and health information.

Business actors who do not fulfill their obligations in accordance with the provisions of Article 7 and Article 6 of the UUPK, such as violating consumer rights and not providing correct, clear and honest information regarding the condition and guarantee of goods and/or services and providing explanations of use, repair and maintenance and not being able to guarantee the quality of goods and/or services produced and/or traded based on the provisions of applicable goods and/or service quality standards. As a result of the actions of business actors who do not fulfill their obligations in providing correct, clear and honest information regarding the side effects of cigarettes, and causing losses to consumers, then business actors must be responsible for their actions. The

²³Zumrotin K. Susilo, *Consumer's Tongue Connector*. 1st ed., (Jakarta: Puspa Suara, 1996), pp. 11-14

responsibilities of business actors have been regulated in Article 19 of the UUPK, namely:

- 1) *Business actors are responsible for providing compensation for damage, pollution and/or consumer losses resulting from consuming goods and/or services produced or traded.*
- 2) *Compensation as referred to in paragraph (1) may be in the form of a refund or replacement of goods and/or services of the same type or equivalent value, or health care and/or the provision of benefits in accordance with the provisions of applicable laws and regulations.*
- 3) *Compensation will be provided within a period of 7 (seven) days after the transaction date.*
- 4) *The provision of compensation as referred to in paragraph (1) and paragraph (2) does not eliminate the possibility of criminal charges based on further evidence regarding the existence of an element of error.*
- 5) *The provisions referred to in paragraph (1) and paragraph (2) do not apply if the business actor can prove that the error was consumer error feed.*

Law Number 8 of 1999 concerning Consumer Protection regulates more broadly regarding products consumed and circulated in the community. As Article 8 letter i and letter j of Law Number 8 of 1999 concerning Consumer Protection, the contents of which explain the prohibited acts for business actors, regulates as follows:

“(i) Do not attach labels or make product descriptions containing the product name, size, net weight/contents, composition, usage instructions, date of manufacture, side effects, name and address of the business actor and other information for use that according to the provisions must be attached/made.”

Violation of the party that does not include health warning labels and health information in the form of images on the packaging can be defined more broadly with violations in Article 8 letter (i) of Law Number 8 of 1999 concerning Consumer Protection, namely violations in the form of not including the composition of ingredients in the Label on labeled cigarette products. Sanctions related to violations of Article 8 are regulated in Article 62 of Law Number 8 of 1999 concerning Consumer Protection. Thus, based on Article 114 of Law Number 36 of 2009 in conjunction with Article 6 of Government Regulation No. 19 of 2003 in conjunction with Article 8 of Government Regulation No. 19 of 2003 in conjunction with Article 37 of Government Regulation No. 19 of 2003 in conjunction with Article 8 of Law No. 8 of 1999 in conjunction with Article 62 of Law No. 8 of 1999, then if the business actor does not include health warning labels and health information in the form of images on the packaging, then the business actor can be subject to sanctions as regulated in Article 62 paragraph (1) of the Consumer Protection Law, with sanctions in the form of imprisonment

for a maximum of 5 (five) years or a maximum fine of IDR 2,000,000,000.00 (two billion rupiah).

Warnings regarding the side effects of consuming products are regulated in Law No. 36 of 2009 concerning Health. Law No. 36 of 2009 regulates the obligation of business actors to include warnings regarding side effects. consuming cigarettes which is referred to as a "health warning". Article 114 of Law No. 36 of 2009 concerning Health regulates as follows:

"Anyone who produces or imports cigarettes into Indonesian territory is required to include a health warning."

Article 114 of Law Number 36 of 2009 concerning Health regulates the obligation of producers to include health warnings on labeled cigarette product labels, namely warnings in the form of side effects due to consuming labeled cigarette products. In terms of sanctions for business actors who do not include health warnings, this is regulated in Article 199 of Law Number 36 of 2009 concerning Health, namely:

- "(1) Any person who intentionally produces or imports cigarettes into the territory of the Republic of Indonesia without including a health warning in the form of a picture as referred to in Article 114 shall be subject to a maximum imprisonment of 5 (five) years and a maximum fine of IDR 500,000,000.00 (five hundred million rupiah);*
- (2) Any person who intentionally violates the smoke-free area as referred to in Article 115 shall be subject to a maximum fine of IDR 50,000,000.00 (fifty million rupiah)."*

Thus, if the business actor does not include a health warning on the label of a labeled cigarette product. Then he can be subject to sanctions based on Article 199 paragraph (1) of Law Number 36 of 2009 concerning Health, namely a maximum imprisonment of 5 (five years) and a maximum fine of Rp. 500,000,000.00 (five hundred million rupiah);

4. Conclusion

Consumer protection in Indonesia is currently generally based on Law Number 8 of 1999 concerning Consumer Protection ("UUPK"). Specifically regarding protection for cigarette users, we can find the regulation in Government Regulation Number 109 of 2012 concerning the Protection of Materials Containing Addictive Substances in the Form of Tobacco Products for Health (PP 109/2012) and 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. The form of legal protection for cigarette consumers is the inclusion of a health warning label in the form of an image which is one of the consumer's rights to obtain information related to

cigarettes being used for their safety. Cigarette business actors must be held accountable for the actions that have been carried out. The principle of responsibility used in the Consumer Protection Law is the principle of absolute responsibility, namely the principle of responsibility for unlawful acts that are not based on errors and Sanctions for business actors who do not include health warnings are regulated in Article 199 of Law Number 36 of 2009 concerning Health.

5. References

Journals:

Joshua Renaldo, Standard Regulation of Cigarette Products as a Form of Implementation of the Consumer Protection Law, *Jurnal Education And Development*, Vol. 8 No. 2, May 2020 Edition

Rusnaldi Salim, Consumer Protection in Bankruptcy, *Unissula Law Journal* Volume 36 No. 1, June 2021

Setyawati, Desy Ary, Dahlan Ali, and M. Nur Rasyid. "Protection of Consumer Rights and Responsibilities of Business Actors in Electronic Transaction Agreements." *Syiah Kuala Law Journal* 1, No. 3 (2017)

Sukarmi, Consumer Legal Protection in Online Transactions, *Unissula Law Journal* Vol.35 No. 1 (2019)

Syahrul Kurniawan, Arpangi, Legal Protection for Consumers in E-Commerce Buying and Selling Transactions, *Sultan Agung Scientific Journal*, Sultan Agung Islamic University, Semarang, September 19, 2023

Books:

Ahmadi Miru & Sutarman Yodo, (2010), *Consumer Protection Law*, 6th ed., Jakarta: PT Rajagrafindo Persada,

Aiman Husaini, (2006), *Smoking Repentance: Secrets and Effective Ways to Stop Smoking*, 1st ed.; Depok: Pustaka Iman,

CST Kansil, (1989), *Introduction to Indonesian Law and Legal System*, Jakarta: Balai Pustaka Jakarta

Satijipto Raharjo, (2000), "Legal Science", Bandung: PT.Soerjono Soekanto & Sri Mamudji, *Normative Legal Research (A Brief Review)*, Jakarta, Rajawali Pers, 2016

Suryo Sukendro, (2014) "The Philosophy of Smoking", 2nd Edition, (Yogyakarta: Pinus Book Publisher,

Zulham, *Consumer Protection Law*, (2016), Jakarta: Prenadamedia Group,

Zumrotin K. Susilo, (1996), *Consumer Tongue Connector*. 1st ed., Jakarta: Puspa Suara,

Regulation:

Law Number 17 of 2023 concerning Health

Law Number 8 of 1999 concerning Consumer Protection

Regulation of the Minister of Health of the Republic of Indonesia Number 56 of 2017 Concerning Amendments to Regulation of the Minister of Health Number 28 of 2013 Concerning the Inclusion of Health Warnings and Health Information on Tobacco Product Packaging