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Urgency of Electrical Cigarette Policy by the Indonesian Government

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Abstract: Smoking is one of the most basic needs in Indonesian society, in addition to primary and secondary needs. This can be seen from the data released from the Global Adult Tobacco Survey (GATS) 2021 as quoted by the Ministry of Health of the Republic of Indonesia found the fact that cigarettes are the second-largest spending requirement of Indonesian people with lower economic rates, beating spending on production for nutritious food. Not to mention that according to the data it is said that the average Indonesian population spends Rp. 382.091.7 per month only for the needs of cigarettes. Following the development of the era, cigarettes then evolved from what was once a conventional cigarette to an e-cigarette. Not to mention the enthusiastic welcome given by young people to the presence of e-cigarettes that are a new trend in the enjoyment of cigarettes. The increase in sales value is relatively large, not excluding the possibility that taxation will also continue to increase as the rate of tax receipt from electric cigarettes in Indonesia increases. Given the situation, the government should have made a policy to determine the appropriate tariff system and tax structure so that the increase in taxes on electric cigarettes is not too drastic to affect the determination of the sale price of electronic cigarettes by the seller or retailers of the electric cigarette itself. The research method used is descriptive, with a normative juridical approach. The data used is derived from secondary data which is primary legal material that regulates legislation on Indonesian customs and is supported by secondary legal materials such as books and scientific writings of legal experts in the field of policy law.

Keywords: Public policy, e-cigarette, government

1. Introduction

Electronic cigarettes, or e-cigarettes and vapes, have been a hot topic of discussion lately in both discussions and discussions on policies related to public health, especially in Indonesia, which is becoming a new thing, especially since Indonesia is one of the largest cigarette markets in the world (Glantz & Bareham, 2018). This policy related to e-cigarettes has become crucial due to the growth of the industry and its rapid popularity in society, especially among the younger generation (Giovacchini et al., 2022). Electronic cigarettes are technology-based devices that allow users to inhale nicotine, *propylene glycol* (PG), *vegetable glycerin* (VG), and other chemicals in the form of steam that have aroma and flavor according to their own characteristics.

Although e-cigarettes are often considered a safer alternative to conventional cigarettes, scientific evidence of their potential hazards is still incomplete. Several studies show that electric cigarette vapor contains a number of hazardous chemicals, although in lower concentrations than conventional cigarettes (Palazzolo, 2013). Therefore, the protection of public health is the main reason for governments to regulate and monitor the use and distribution of e-cigarettes.

Not to mention, the younger generation is often the main target of e-cigarette marketing. The e-cigarette company uses a variety of marketing strategies that are attractive to teenagers and young people, such as varied tastes and attractive designs (Tomashefski, 2016). Therefore, governments need to act quickly to prevent the consumption of e-cigarettes among younger generations, given the negative impact on their health in the future. Although there are some smoking-related regulations in Indonesia, specific regulations on e-cigarettes are still lacking. Governments need to strengthen existing regulatory frameworks or even develop new regulations that regulate the production, distribution, sale, and promotion of electronic cigarettes (Kennedy et al., 2017). These include the requirement of clear health warning labels, advertising restrictions, and strict law enforcement against breaches of regulations.

If e-cigarettes become more popular, they could disrupt the conventional cigarette market and reduce government revenues from tobacco taxes. Therefore, governments need to strike a balance between public health interests and the sustainability of the tobacco industry. In order to achieve these goals, the Indonesian government should have taken

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strategic and decisive steps to regulate e-cigarettes (Bhalerao et al., 2019). This includes gathering further scientific evidence on the health impacts of e-cigarettes, raising public awareness of the risks associated with their use, and establishing strong regulations to protect public health, especially the younger generation, from the threats of electronic cigarettes. Therefore, this research aims to identifying the urgency of the Indonesian government's e-cigarette policy.

2. Methodology

In this study, the method used is empirical jurisprudence, which studies the law as a conception of actual behavior and implicit social symptoms that can be experienced in the life of society (Muhaimin, 2020). Regarding the method, in this study, a legal event in this case is the lack of a policy that clearly regulates e-cigarettes, thus creating a fragility in the regulation of electric cigarettes that can affect health, especially among adolescents, as well as the possibility of an impact on economic aspects.

3. Analysis and Discussion

Smoking is one of the most basic needs in Indonesian society, in addition to primary and secondary needs. This can be seen from the data released from the Global Adult Tobacco Survey (GATS) 2021, as quoted by the Ministry of Health of the Republic of Indonesia, which found that tobacco is the second largest spending requirement of Indonesian people with a lower economy, beating spending on production for nutritious food (Murwendah & Malau, 2018).

Not to mention, according to the data it is said that the average Indonesian population spends Rp. 382.091.7 per month for cigarettes only (Sreeramareddy & Aye, 2021). It demonstrates the Indonesian people's strong desire for and consumption of cigarettes. Following the development of the era, cigarettes then evolved from what was once a conventional cigarette to an e-Cigarette. Not to mention the enthusiastic welcome given by young people to the presence of e-Cigarettes that are a new trend in the enjoyment of cigarettes.

Vape or e-Cigarette is a set of devices that in use is supported by several components which generally include Battery, Atomizer (Heating Element), Catridge, Mouthpiece (Marques et al., 2021). Whether vape or electric cigarettes themselves have many kinds of types, among others include e-Pipe, e-Cigarettes, large-size tank devices, medium-sized tank devices, rechargeable e-cigarettes, as well as disposable e-cigarettes (Murthy, 2017).

That's what makes an electric cigarette different from a conventional cigarette. According to Rahman et al. (2015), state what makes e-cigarettes different from conventional cigarettes is the absence of TAR (total aerosol residue) in e-cigarettes. The e-cigarettes themselves don't burn like conventional cigarettes. In conventional cigarettes, there is a burning of tobacco that can then produce carcinogens. Bozier et al. (2020) found in electronic cigarettes are capable of suppressing health risks due to the difference between harmful and potentially harmful chemical compounds seen from the way they are used. Considering these health considerations, it does not exclude the possibility of smokers shifting their choice from conventional to electronic cigarettes.

About a decade ago, e-cigarettes, vapes, and vape pens were being promoted as a tool to replace conventional cigarettes, meaning that electric cigarettes were one of the therapeutic methods to quit smoking. In the campaign, it was said that electronic cigarettes are safer than conventional cigars with consideration of the absence of TAR (total aerosol residue), a therapy to quit smoking, thus creating the impression that electronic cigars are safer compared to conventional cigars. In a nutshell, it's not as harmful as conventional cigarettes, but it can have health effects. In fact, many studies have proven that e-cigarettes also contain aldehydes, oxidizing substances, and nicotine that can be harmful to health (McKeganey et al., 2018).

In the health study of e-cigarettes, there are two opinions that relate to electric cigarettes. Opinions against the existence of e-cigarettes are based on the fact that electronic cigarettes can have a negative impact on health. This is what the Center for Disease Control and Prevention (CDC) and the U.S. Food and Drug Administration (FDA) have suggested. Like other health agencies, the CDC and the FDA have argued that e-cigarettes have negative effects on the lungs, heart, blood vessels, brain, and nervous system (e-cigarette or vaping product use-associated lung injury). In addition, e-cigarettes also affect the heart and blood vessels, which can increase the risk of heart disease, stroke, and high blood pressure and weaken heart function. The effects of e-cigarettes on the brain and the nervous system, among others, can lead to nicotine addiction, disrupt the development of the brain in adolescence, and increase the risk of depression. In addition to the impact, e-cigarettes are predicted to increase the risk of cancer, weaken the immune system, cause tooth damage, and the riskiest ones are worsening asthma (CDCP, 2020).

Contrary to the opinion that e-cigarettes are dangerous, research in the UK suggests that they are actually less health-threatening than conventional cigarettes (Summers et al., 2022). According to Public Health England (PHE), e-cigarettes can actually help people quit their smoking habits (McNeil et al., 2015). It has been known since 2011 that the number of e-cigarette users targeted as a means of therapy to quit smoking has increased rapidly. According to PHE, electric cigarettes are 95% less dangerous than conventional cigarettes. This can be seen from the research carried out by PHE. In fact, they do not contain TAR (total aerosol residue) or carbon monoxide, which are toxic substances contained in conventional cigars. (Williams et al., 2023). The same is true of the research carried out by Oxford University. From the study, it was later found that e-cigarettes can help smokers quit smoking, which is more effective than medically approved nicotine replacements. Through an Oxford Centre for Tobacco and Alcohol Studies (OCTAS) study in 2014, it was

concluded that e-cigarettes were 95% safer than conventional cigarettes. Then, in 2017, OCTAS conducted a study followed by 866 smokers for 12 months, finding that electric cigarettes were twice as effective as nicotine replacement therapy (NRT) in helping smokers quit (McGee et al., 2019). Furthermore, in 2021, OCTAS conducted a trial followed by 3.500, two-year swimmers that found that the use of e-cigarettes did not harm lung health in the short term (Mishra et al., 2015).

From the point of view of technological development, the e-cigarette industry is a relatively new industry compared to the conventional cigarette industry, which has been in place for a long time. Whereas the government's policy on new electric cigarettes began around 2018 with a maximum tax rate of 57% that categorizes taxes on e-cigarettes into types of tobacco extracts and essences (Solihat, 2023). By 2023, the government has also planned an average electricity tax increase of 15% annually for the next five years.

According to the RELX report, the use of e-cigarettes in Indonesia has been steadily increasing in recent years. As with data released by the Ministry of Industry, there will be a 40% increase in total e-cigarette users by 2021. The Ministry of Finance also said that by 2022, the realization of tobacco taxes for electronic cigarettes would reach Rs. 1,205 trillion. Whereas Rp. 119.47 billion covers receipts from liquid electric cigarettes in closed systems, Rp. 271.93 billion from solid liquid cigarettes, as well as Rp. 627.11 billion from open liquid electronic cigarettes (Sriyanto & Pangestu, 2022). While receipt of tobacco income tax (CHT) at the end of March 2023 recorded Rs. 55.24 trillion, which decreased 0.74% from the same period in 2022, which recorded Rs. That aspect is nothing more than an important aspect of state acceptance. Through electric cigarette taxes, state receipts are expected to increase. As can be seen in the rapidly growing global electric cigarette market in 2005, which ranged from US$50 million to more than US$20 billion in 2019, it will grow to US$34 billion by 2024 (Van Der Eijk et al., 2022).

The increase in sales value is relatively large, not excluding the possibility that taxation will also continue to increase as the rate of tax receipt from electric cigarettes in Indonesia increases. Given the situation, the government should have made a policy to determine the appropriate tariff system and tax structure so that the increase in taxes on electric cigarettes is not too drastic to affect the determination of the sale price of electronic cigarettes by the seller or retailers of the electric cigarette itself. Seeing the realization in 2023, the increase in value only covers the retail sale price but does not include the tax rate. Based on the rise in the sale price of retail, the tax enforcement policy, such as the value-added tax, also comes along with the increase, which affects the revenue of the state.

An important aspect of the e-cigarette industry is the absorption of labor. According to President-General of the Vape Indonesia Retail Association (ARVINDO), at present, the number of perpetrators in the e-cigarette industry reaches 5,000 entrepreneurs, including retail stores spread throughout Indonesia. Gunardi et al. (2021) also adds 150–200 thousand jobs to the e-cigarette industry and is believed to continue to grow. The e-cigarette industry is a relatively fast-growing new business area. This doesn't exclude the possibility of more and more absorption of the labor force that is closely linked to the production of electric cigarettes.

The Indonesian government, in its implementation, has not yet explicitly regulated the use of electronic cigarettes (Solihat, 2023). Just in the legal context, the Indonesian government, including through the Minister of Commerce, has drawn up in the Trade Minister's Regulation No. 86 of 2017 on the provisions for importing electric cigarettes (Westra, 2018). However, a number of policies have been implemented, including the imposition of a 10% tax on electric cigarettes (both vapemod and pod), age restrictions on e-cigarette users, conditions and eligibility for the business of electronic cigarettes, and the products produced (Klein et al., 2020). Meanwhile, the Ministry of Health is seeking to harmonize rules aimed at limiting the consumption of e-cigarettes, including both restrictions on the advertising of electronic cigarettes as well as prohibitions on the sale of electric cigarettes to children and pregnant mothers.

4. Conclusion

In conclusion, e-cigarettes have health effects, both directly and indirectly. There are some opinions that allow the use of e-cigarettes based on the results of studies and research showing that e-cigarettes can be used as an alternative therapeutic means for smokers to be able to quit smoking completely. In addition, according to the same study, e-cigarettes are 95% less likely to cause lung damage, heart disease, stroke, and even cancer. From an economic point of view, e-cigarettes are seen as capable of increasing national revenue, as well as being able to absorb a new workforce in the electric cigarette industry. But on the other hand, the increase in electric cigarette taxes could raise the sales price of the electric cigarettes themselves, so concerns could disrupt the newly developed e-cigarette industry. Therefore, government policy is necessary to clearly regulate e-cigarettes, both in the industry sector, trade, and safety standards, as well as the control of electronic cigarettes and the products related to the electric cigarettes themselves. The government should also not only regulate the amount of taxes imposed on e-cigarettes, but in the formulation of the policy, it should also take into account other aspects that can affect the development of the electronic cigarette industry itself.

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