

Regulation of Personal Vaporizer Sales to Children in Indonesia

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Abstract

Smoking, including among minors, is a worrying phenomenon in Indonesia, mainly due to the rapid development of the environment and lack of supervision. This study aims to analyze legal protection for minors regarding the use of personal vaporizers, considering the health risks associated with smoking and vaping habits. This research uses a normative legal approach, utilizing primary and secondary sources to examine the existing legal framework and its implementation. The results show that laws in Indonesia, such as the Child Protection Law and the Consumer Protection Law, recognize the rights of children and consumers, including their safety and protection from dangerous substances. However, specific regulations regarding personal vaporizers and their sale to minors still do not exist, resulting in ambiguity for the business world and inadequate protection for minors. The recommendations given include strengthening regulations, providing strict administrative sanctions to violators, increasing educational campaigns, and increasing parental and community involvement in preventing underage smoking and vaping. Ultimately, a comprehensive approach involving legal reform, law enforcement, and awareness-raising efforts is critical to safeguarding the health and well-being of minors in Indonesia.

Keywords: *Personal vaporizer; minors; legal protection; smoking prevention; Indonesia*

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Introduction

Smoking, including among minors, is a worrying phenomenon in Indonesia. The main factors causing this are the rapidly developing environment and lack of supervision. According to the *KBBI* (Indonesian Dictionary) and experts like Romli Atmasasmita, a minor is an individual who is not yet an adult and not married. Based on the Civil Code and the Child Welfare Law, children are those under 21 years of age who are not married or under 18 years old.

Psychologically, children are vulnerable to environmental influences because they are still in physical and psychological growth. This influence often leads them into smoking habits, including the use of personal vaporizers or electronic cigarettes, which carry high risks. According to the Japanese Ministry of Health, vapor contains substances more harmful than conventional cigarettes and can cause cancer. Therefore, stricter legal protection for teenagers under 21 is necessary.

The rights and needs of children are enshrined in Law No. 23 of 2002 on Child Protection and Law No. 4 of 1979 on Child Welfare, stating that: "Children have the right to live, grow, develop, and participate in accordance with human dignity and receive protection from violence and discrimination."

The increasing use of personal vaporizers by children raises concerns due to health risks such as nicotine addiction and heart disease. Regulations related to vape use, especially for children, need to be strengthened. Law No. 17 of 2023 on Health and Government Regulation No. 109 of 2012 on the Security of Materials Containing Addictive Substances in Tobacco Products already exist but need to be more specific and stringent.

Civil law places the responsibility on parents to care for and educate their children, while criminal law protects children from various forms of violence. In the context of Indonesian law, the protection of minors is regulated by the Child Protection Act. Article 3 of this Act emphasizes that

"child protection aims to ensure that children's rights are fulfilled so that they can live and develop optimally and be protected from violence and discrimination."

The increasing number of children using vaporizers requires special attention from the government for more effective protection. Article 4 letter a of Law No. 8 of 1999 on Consumer Protection (*UUPK*) emphasizes "the right of consumers to comfort, security, and safety." However, the lack of specific regulations governing personal vaporizers causes business operators to lack clear guidelines. Government Regulation No. 109 of 2012 provides administrative sanctions but does not specifically regulate sales to children under 18 years of age.

Adjustments to regulations or additional regulations specifically governing the sale of personal vaporizers and educational and awareness campaigns to prevent their use by children are needed. With strict regulations and awareness campaigns, it is hoped that the use of personal vaporizers by children can be reduced, protecting them from serious health dangers. Therefore, this research will focus on two main problems: how is the regulation of personal vaporizer sales to children in Indonesia? Through analysis of these issues, it is hoped to gain a more comprehensive understanding of child protection efforts and the effectiveness of existing regulations in addressing the issue of personal vaporizer use among children in Indonesia.

Research Methods

The method used in this research is a normative legal type that uses legal norms as its approach and analysis. This research aims to study, interpret, and understand the law from a theoretical and conceptual perspective. In normative legal research, researchers usually use several main approaches, such as legislation and conceptual. The normative legal research method using primary and secondary sources provides an in-depth understanding of applicable legal norms and how those norms are interpreted and applied in practice. This research is essential in developing legal theory and providing recommendations for improving existing laws.

Results And Discussion

Overview of the Use of Personal Vaporizers by Minors in Indonesia

Smoking is an activity that is not unfamiliar in everyday human life and is now carried out not only by adults but also by minors. This phenomenon occurs due to the significant negative influence of the child's changing environment. In the context of Indonesian law, the categorization of minors varies in definition. According to the Indonesian Dictionary (KBBI), a minor is a person who is still a child. Experts like Romli Atmasasmita state that children are individuals who are not yet adults and not married. According to the Civil Code, a person is categorized as a child or not yet an adult if they are under 21 years of age and not married. Meanwhile, the Child Welfare Law defines a child as an individual under the age of 18, including those still in the womb.

Thus, minors can be concluded as individuals under the age of 21 and unmarried. Psychologically, children are very vulnerable to environmental influences because they are still in physical and psychological growth, making them easily influenced. The environment significantly impacts children's behavior. Therefore, the rights of minors must be protected through special regulations, namely the Child Protection Act.

The increasing use of vaporizers by minors raises concerns. According to the Japanese Ministry of Health, vapor contains substances produced through smoke that are more harmful than conventional cigarettes and can cause cancer. This adds urgency to protect children from the dangers of vapor use.

To ensure the safety and security of consumers, especially minors, legal protections have been provided to protect the dignity and honor of consumers through the Consumer Protection Act (UUPK). This law emphasizes that consumer rights must be protected, in accordance with Article 3 letter b of the UUPK, which states that the purpose of consumer protection is "to uphold the dignity and honor of consumers by avoiding them from negative access to the use of goods and/or services

." In line with the Child Protection Act, the purpose of child protection is outlined in Article 3, which states that "child protection aims to ensure the fulfillment of children's rights so that they can live, grow, develop, and participate optimally in accordance with the dignity and values of humanity, and receive protection from violence and discrimination."

Thus, it is hoped to create Indonesian children who are a superior generation, future leaders, children of the nation with integrity, a virtuous society, and quality successors. Children need special legal protection to avoid the negative impact of purchasing or using vaporizers. This protection is known in foreign terms as "protecting" or "being protected," related to efforts to protect certain rights. According to Harjono, legal protection (*rechtsbescherming* in Dutch) is a protective facility provided by law to ensure that certain interests are protected and constitutes legal rights. This is evident in Article 28 G paragraph 1 of the 1945 Constitution of the Republic of Indonesia, which states that "every individual has the right to personal protection, family, honor, society, dignity, and property under his control, as well as the right to security and protection from fear of doing or not doing something that is a human right."

Legal protection for children related to the sale of cigarettes and tobacco products involves various roles of government and society, according to Article 20 of the Child Protection Act, which states that "the responsibility for protecting children rests with the state, government, local government, community, family, and parents or guardians."

This law is vital to prevent arbitrary actions that can harm children physically and psychologically. Therefore, legal efforts must be improved, given the urgency of legal protection. Legal protection can be preventive and repressive:

1. Preventive Protection: Steps taken before a legal violation occurs include increased monitoring of electronic cigarette and vapor sales and educating parents about the dangers of cigarettes and electronic cigarette use.
2. Repressive Protection: Remedial steps after illegal acts occur, such as imposing sanctions on business operators who sell vapor products to minors.

Currently, no regulation specifically governs electronic cigarettes or personal vaporizers in Indonesia. Still, the government continues to tackle vapor use as part of consumer protection. Article 113 of the Health Law regulates the control of addictive substances to prevent harm and ensure their circulation complies with standards set by the Food and Drug Supervisory Agency (BPOM). BPOM is responsible for regulating nicotine levels in products. Still, clear regulations regarding vapor are lacking, so BPOM cannot fully take responsibility as with conventional cigarettes.

Although regulations about conventional cigarettes and nicotine levels are already in place, specific regulations regarding vapor and nicotine levels in vapors are still lacking. Therefore, consumers need to understand the importance of their rights and obligations, as stipulated in the UUPK, and business operators must act in good faith when selling their products. For example, purchasing vapors should require identity verification to ensure the

buyer is not a minor, and the sales locations for electronic and conventional cigarettes should state that the products are for adults only.

Consumers who suffer losses may have the right to file lawsuits against business operators, as provided in Articles 45 to 48 of the Consumer Protection Act. Article 45 paragraph (1) states that “Consumers who feel aggrieved may choose to file a lawsuit through a consumer dispute resolution agency or through general courts.”

Meanwhile, Article 45 paragraph (2) explains that “consumer disputes can be resolved through the court or outside the court, depending on the voluntary agreement of the parties involved in the dispute.” In situations where business actors fail to fulfill their obligations in selling products to consumers, consumers have the right to file a civil lawsuit for breach of contract.

Analysis of Related Regulations and Their Implementation

The laws and positive laws that regulate the sale and use of personal vaporizers, especially for children, cover several important aspects. Here is an overview of some relevant laws and regulations:

1. Law Number 8 of 1999 Concerning Consumer Protection

This law establishes the principles of consumer protection, including “security, balance, fairness, and safety.” Consumers have the right to feel comfortable, safe, and secure” in using goods and services while being expected to comply with the associated usage instructions.

Law Number 8 of 1999, which discusses “Consumer Protection, emphasizes the importance of consumer protection based on the principles of benefit, justice, balance, security, safety, and legal certainty.”

This underscores the importance of ensuring that every consumer protection effort provides tangible benefits, maintains a balance of interests, and provides legal certainty. Additionally, this law emphasizes that one of the objectives of the formation of consumer protection regulations is to improve the living standards and welfare of consumers. The quality of goods and services not only supports the sustainability of the producers’ businesses but also guarantees the comfort, health, protection, security, and welfare of consumers. Consumer rights, such as the right to safety, enjoyment, security, and welfare in the use of goods and services, are also emphasized in this law to ensure that consumers feel safe and have legal protection when using the products or services they purchase.

2. Law Number 17 of 2023 Concerning Health

Article 149 in Law Number 17 of 2023 concerning Health regulates the production, circulation, and use of addictive substances, particularly those related to tobacco products, with the aim of preventing disturbances and threats to the health of individuals, families, communities, and the environment. Tobacco products, such as leaf cigarettes, cigars, cigarettes, solid tobacco, liquid and sliced tobacco, as well as other processed tobacco products, are included in the definition of tobacco products. This article also emphasizes the importance of complying with the standards and requirements that have been established with consideration of the health risks involved.

Article 150 assigns the task to every individual involved in the production, import, and distribution of tobacco products to include health warnings in the form of text with additional images. This rule is intended to provide clear information and visual representation of the health risks associated with the use of tobacco products.

Article 151 regulates smoke-free areas, which include various places such as educational institution facilities, healthcare services, children's play areas, public transportation, places of worship, work environments, and other public locations. Local governments are responsible for implementing smoke-free areas in their regions, while

managers of public places that fall under the category of smoke-free areas must provide designated smoking areas.

Finally, Article 152 gives the government the authority to further regulate the government's regulations on controlling addictive substances, including tobacco products and electronic cigarettes, as stipulated in Government Regulations. This indicates the government's efforts to continue strengthening regulations related to tobacco control to protect public health.

3. Law Number 35 of 2014 Concerning Amendments to Law Number 23 of 2002 Concerning Child Protection

This legal product straightens out children's rights to protection and fulfillment of their rights, as well as establishing the compliance of parents and the government in protecting children from all forms of harm, including the use of cigarettes.

4. Government Regulation Number 109 of 2012 Concerning Safeguarding Materials Containing Addictive Substances in the Form of Tobacco Products for Health

This regulation encompasses various provisions to protect the public from the dangers of tobacco products, including the prohibition of selling tobacco products to individuals under the age of 18 and pregnant women. However, criticism of this regulation is the lack of strict sanctions for violations of the prohibition on selling tobacco products to children.

Government Regulation Number 109 of 2012 aims to safeguard public welfare from the risks posed by tobacco products by prohibiting the sale of tobacco products to individuals under the age of 18 and pregnant women. However, despite the regulation, many children still buy cigarettes. This is due to several factors, including the lack of effective law enforcement and the lack of strict sanctions for violators.

Although the regulation prohibits selling to children under 18, the lack of significant administrative sanctions for business actors who violate this rule makes law enforcement less effective. Without strict sanctions, business actors may feel that the risk of violating the regulation is lower than the financial benefits they gain from selling tobacco products to children, prompting them to continue the practice, ignoring the established rules.

Prevention Efforts

1. Clarifying and Strengthening Regulations:

a. Revising Government Regulation Number 109 of 2012:

The current Government Regulation Number 109 of 2012 does not specifically regulate personal vaporizers or electronic cigarettes. Revising this regulation is crucial to filling the legal void and providing regulatory clarity regarding these products. Several key aspects that need to be included in the revision are:

i. Clear definition of personal vaporizers and the liquids used:

There needs to be a concrete and comprehensive definition of what a personal vaporizer is, including various types such as e-cigarettes, vape pens, pod systems, etc. This definition should also include an explanation of the liquid or e-juice used, including its basic composition such as propylene glycol, vegetable glycerin, nicotine, and flavorings.

ii. Specific regulations on the production, distribution, and sale of personal vaporizers:

Regulations should cover the entire supply chain of vaporizer products, from the production process to sales to the end consumer. This includes manufacturing standards that manufacturers must meet, requirements for importers and distributors, as well as retail sales rules. For example, manufacturers should have Good Manufacturing Practice (GMP)

certification, distributors should have a special permit, and retail sellers should comply with certain rules, such as not selling to minors.

iii. Safety standards and substance content in vaporizer liquids:

There should be a maximum limit set for nicotine content in liquids, as well as a prohibition on the use of certain harmful substances. These standards should also include safety requirements for vaporizer devices, such as safe batteries and protection systems against overheating. Additionally, testing and certification procedures should be in place to ensure products meet the established safety standards.

b. Creating Specific Regulations:

In addition to revising PP No. 109/2012, specific regulations are needed that more thoroughly govern the sale and use of personal vaporizers. This regulation can take the form of a Minister of Health Regulation or even a new law. Some important aspects that need to be regulated include:

i. Strict prohibition on sales to individuals under 18:

The regulation must explicitly prohibit the sale of vaporizer products to individuals under 18. This includes strict sanctions for sellers who violate the rule, such as heavy fines or revocation of business licenses. Mechanisms for verifying buyers' ages should also be regulated, such as requiring ID checks or other identity documents.

ii. Permit requirements for vaporizer sellers:

Vaporizer sellers must have a special permit issued by the relevant authority. The requirements for obtaining this permit can include mandatory training on tobacco product and vaporizer regulations, an understanding of health hazards, and a commitment to comply with sales rules. This permit must be renewed periodically and can be revoked in case of violations.

iii. Clear packaging and labeling standards that include health warnings:

The regulation must establish strict standards for vaporizer product packaging and labeling. This includes the obligation to include clear and easily readable health warnings, a complete list of product contents, and information about usage risks. Health warnings should cover nicotine addiction risks, potential health hazards to the lungs, and specific risks for vulnerable groups such as pregnant women or individuals with heart conditions.

2. Enhancing Age Verification Mechanisms:

a. ID Check System:

Implementing an ID check system that must be performed by sellers before conducting personal vaporizer transactions. This includes:

- i. The obligation for sellers to verify buyers' age through ID cards.
- ii. Training for sellers on how to correctly verify IDs.
- iii. Strict sanctions for sellers who neglect verification.

b. Digital Age Verification System:

Developing a digital age verification system for online purchases. This can include:

- i. Integration with the national population database.
- ii. Use of facial recognition technology to match IDs.
- iii. A one-time password (OTP) system sent to registered phone numbers.

3. Revision of the Child Protection Law:

Considering including a special article on protecting children from the dangers of tobacco products, including personal vaporizers, in the revision of the Child Protection Law. This article should include:

- a. A clear definition of tobacco products and similar products, including personal vaporizers.
- b. Strict prohibition on the sale, distribution, or provision of tobacco products and personal vaporizers to children.
- c. Obligations for parents and communities to protect children from exposure to tobacco products and personal vaporizers.

Conclusion

The use of personal vaporizers (electronic cigarettes) among minors in Indonesia has become a serious problem requiring immediate attention and action. Although the existing legal framework, including the Child Protection Law, the Consumer Protection Law, and the Health Law, provides a general basis for child protection, these regulations do not specifically regulate the use of personal vaporizers. Government Regulations Government Regulation No. 109 of 2012 indeed prohibits the sale of tobacco products to children under the age of 18, but the lack of strict sanctions makes law enforcement less effective. To address this issue, a comprehensive revision and strengthening of regulations are needed. This includes revising Government Regulation No. 109/2012 to provide a clear definition of personal vaporizers, regulate their production and distribution, and set safety standards. Additionally, a specific regulation governing the sale of personal vaporizers should be established, including a strict prohibition on sales to minors, licensing requirements for sellers, and packaging standards that include health warnings. Enhancing age verification mechanisms, both through physical ID checks and digital verification systems for online purchases, is also essential.

Furthermore, revising the Child Protection Act to include specific articles on protecting children from the dangers of tobacco products and personal vaporizers is an important step. Ultimately, a comprehensive approach is needed that involves legal reform, stricter law enforcement, and efforts to raise public awareness to protect the health and well-being of children in Indonesia from the dangers of personal vaporizers. With these measures, it is hoped that Indonesia can be more effective in protecting its younger generation from health risks associated with personal vaporizer use.

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