

The Dynamics of Local Government Regulation of No Smoking Area in Blitar City: Between Opportunities and Challenges

Weppy Susetiyo^{*1}, Mukhammad Taufan Perdana Putra²

^{1,2}Program Studi Ilmu Hukum, Fakultas Hukum, Universitas Islam Balitar, Blitar

^{*}Corresponding author: weppyfhunisba@gmail.com

Abstract: The regulation of no-smoking area (KTR) in Blitar City, based on its development, the demand for local government regulation (Perda) on cigarettes also seems to be the enthusiasm of the people in the current reality, mainly related to the prohibition of smoking in offices. The purpose of this study is to make new findings as positive things to maximize the role and function of government in implementing of no smoking area (KTR) law in Blitar City. This research attempts to describe how is the review of Blitar's nonsmoking local government regulations on smoking practices in the office. The research method in this study uses qualitative data which obtained through literature study enriched by empirical data that occurs in the field. Whereas the juridical normative approach aims to solve the problem by making the Local Government Regulation of Blitar City of KTR as a starting point for analysis that leads to conclusions. The results showed that the Local Government Regulation of KTR in Blitar City still requires a process that is not simple. Even though KTR as an engineering tool to change the pattern of smoking-free communities in any places to be a community that follows the KTR, but policy makers from Legal Drafter to other government apparatus, must remain consistent in exploring and finding harmony between the interests of the government and society.

Keywords: Prohibition of Smoking in the Office, Local Government Regulation of Blitar KTR, The Danger of Cigarettes.

1. Introduction

Smoking is a very common habit in Indonesia. As one of the largest citizens who smoke, smoke is one of the basic needs after food and drink for the active smokers. This is compounded by consumers who are not only from adult men, even women and children are also consumers. In fact, there have been many research findings and warnings from experts about the impact of smoking not only on health, but also to other aspects of life, both in the short term or long term [1].

In medical views, smoking is a fierce killer for active and passive smokers. Experts have researched and found there are about eighteen different and dangerous poisons found in cigarettes, namely: Acatona, Hydrogen cyanide, Ammonia, Methanol, Toluene, Arsenic,

Butane, Nicotine, Tar, Polonium, Cadmium, Banzopyrane, Vinyl chloride, Dibenzacridine, Urethane, Phyrene, Naphtylamine, and Carbon Monoxide (CO). However, people who have become active consumers of cigarettes do not consider these things and still make cigarettes an object that must always be present in every activity, and smoking bans in public places are sometimes still largely ignored by people who do not think about the impact on others namely for passive smokers, especially for children who are still under five and in pregnant mothers [2].

In its development, the response of Indonesian Ulema, for example, the fatwa commission of the Indonesian Ulema Council (MUI) also agreed that there were differences of opinion regarding the smoking law, between makruh and haram. And also agreed that smoking is haram if it done in public places, by children and pregnant women [3]. However, from the fatwa raises the pros and cons for the people of Indonesia that the majority are cigarette consumers. There are also many counter-attitudes from MUI members, especially tobacco farmers and workers in cigarette companies who rely on the economy for the cigarette business.

Cigarette problems also occur in Blitar. The majority of Ulema both from Nahdlatul Ulama' (NU) and Muhammadiyah Blitar basically support the fatwa from MUI, although both of them have own foundation to respond the cigarette law. Nevertheless these ulema still support, because the purpose of the fatwa is very appropriate to be supported by all groups because the aim is to strengthen the community, and to prevent children from smoking, because in cigarettes there are addictive substances such as drugs [4] .

Furthermore, the problem of cigarettes is become a certain concentration for the government of Blitar. The plan to make a Local Government Regulation on KTR has been held by the local Health Office since 2017, specifically related to the drafting of academic texts and the Regulation draft, but the review was delayed due to budget constraints. Discussion was made in 2018 that KTR included health facilities, hospitals, schools, places of worship, children's playgrounds and offices. However, at the beginning of 2019, it can only be targeted to be effective at the end of the year; this is due to several obstacles related to infrastructure and tools [5].

Based on the description above, the authors want to conduct in-depth research related to the problem of smoking in Blitar. It is important to make a positive contribution to stake holders, especially for state apparatus in making policies so that function can be optimal in society.

2. Method

This type of research is field research. The researcher will collect the documents related to positive legal products [6], especially the Local Government Regulation of KTR in Blitar, so that the researcher will try to describe how the analysis and review the Local Government Regulation of KTR on smoking practices in the office.

Furthermore, this research uses juridical-sociological approach. The aim is to parse the research problem by making the Local Government Regulations of KTR in Blitar as a starting point to make conclusions and specific recommendations based on the results of analysis that have been carried out in depth, especially related to juridical and other sociological aspects.

While the qualitative data obtained through primary data and secondary data. Primary data were traced through interviews and observations [7] to policy makers, specifically the Blitar Government and related agencies in implementing this KTR regulation, while secondary data were in the form of literature studies such as books, journals and other authoritative sources. Furthermore, it is enriched with empirical data in the field such as community responses and information and other sources of information, both oral and written.

3. Result

KTR problem is a national problem that actually has clear legality, but in its application has some problems. The obligation of regional governments to establish KTR in their respective regions is contained in Law No. 36 of 2009 concerning Health and Government Regulation No. 109 of 2012 concerning securing ingredients that contain addictive substances in the Form of Tobacco Products for Health, whereas KTR can be realized through local government regulations or other regulations [x]. But in reality, the relatively low level of public awareness is one of the main factors of the difficulty in determining the maximum of KTR, this is also made worse by the data where the majority of smokers are dominated by the younger generation: the first rank in rural area and in urban areas it becomes the next rank [9].

The reality above is certainly a sign that there is still an imbalance between the idealized conditions and the empirical conditions faced. For example, from a number of regions considered to be quite successful in implementing KTR is still relatively minimal. We can exemplify some of these areas including: Langitan boarding school in Tuban, East Java: with the jargon "Our right to be able to breathe clean air without cigarette

smoke," this boarding school is quite successful with the KTR program. The main key is the commitment of the leaders of boarding school in conducting socialization and decisive action for violators. Uniquely, the ban is carried out in stages based on the minimum age factor of smoking from 17 years to a minimum of 25 years who can smoke. This is a doctrination strategy that smoking is being harmful to health, and also something taboo to do.

Then Petra Christian University (UKP) Surabaya was awarded the Smoke Free Campus since 2003. The campus successfully implemented the KTR successfully in a gradual manner, from socialization to strict action. This program initially reaped the pros and cons, and even resulted in demonstrations that ended in chaos. The UKP leadership said that it was not easy to implement KTR in the middle of tens thousands Students. However, because of the integrity, cohesiveness and persistence of all the management, finally the UKP become the ones of smoke-free campus in Surabaya. These two examples give an understanding that KTR in quantity is still limited to public spaces that tend to be more private.

Blitar, in the latest development, was mentioned that the use of tobacco in the context of cigarette consumption has significant attention from the local government because the activities were classified as disturbing public order [10]. In its work program, this problem is gradually brought to order by the step of socialization in KTR areas such as hospitals, health services, schools, public places, workplaces, and places of worship. The result is still experiencing some obstacles, but it is quite effective in reducing the dangers of cigarette smoke. This KTR Local Government Regulation will also be strengthened by the Mayor Regulation (Perwali) as a technical regulation The Local Government Regulation of KTR is also a strict sanction for violators - until now it is still undergoing an assessment before being socialized [11].

4. Discussion

Based on some of the data above, we can see that the massive application of KTR in Blitar still requires actions that are not only focused on academic texts, but also commitments in the real form of the stakeholders. As from some statements, KTR in Blitar and its socialization efforts has function effectively so that it can suppress air pollution due to smoking requires strict supervision and enforcement. This can be

realized, for example, by delegating the KTR task force to a number of public places which have been regulated by law such as in Health Care Facilities, schools or colleges, children's playgrounds, places of worship, public transportation, to workplaces [12]. The following analysis will provide a deeper understanding that the KTR program in the perspective of national law is one of the major goals of the state in creating order and comfort for all citizens.

A. KTR: A Social Engineering

The fact that the level of cigarette consumption exceeds the basic needs becomes an iceberg phenomenon. The dualism of the idealist attitude which regards smoking more as a threat is also always in conflict with the pragmatic attitude of the community which actually considers smoking to be the main contributor to the cost of national development with its excise [13]. In various regions it seems to be something that still easily found, therefore the government sets the KTR to be an obligation of all regions in Indonesia so that all elements of the nation are not disturbed, especially their health, by dangerous cigarette smoke. Aside from being an anticipatory measure, it is also a response to Law No. 39 of 2007 concerning Excise which states *"goods that are subject to excise (cigarettes and alcohol) are products whose consumption needs to be monitored because it has a negative impact on consumers."* The Ministry of Health interprets this article as a form of compensation for the negative effects of smoking. [14]

It has become a state paradigm that law (read: legal products) is one of the strategic means in the success of the country's development. Mochtar Kusumaatmadja in this regard considers that, in the context of developing countries such as Indonesia, the use of law as a media in manipulating social patterns of society is relevant considering the developing countries are still far different and lagging behind the legal culture of society

that has been running in developed countries [15], this is also in line with Satjipto Rahardjosaid that:

"... One of the prominent features of law in modern society is, its conscious use by the community. Here the law is not only used to confirm the patterns of habits and behavior found in society, but also direct them to the desired goals, eliminate habits that are considered no longer appropriate, create new patterns of behavior and so on. It is called the modern view of the law which leads to its use as an instrument [16]. "

From this theory, it appears that KTR as government tool of Blitar in realizing living arrangements in accordance with the national agenda, one of them related to cigarette smoke control.

As for the practical level which still allows technical and response constraints and attitudes of the community, of course this should be considered by the government apparatus in the context of evaluating the effectiveness of the existing KTR determination. It can indicator that KTR is being success, also as a step for monitoring and evaluation which is ideally carried out continuously both by health workers, and KTR managers in seeing developments: is it appropriate with the work program that was previously planned [17].

B. KTR: Opportunities and Challenges

Continuing the theory of Mochtar Kusumaatmadja above, community development is inseparable from law. Of course, the intended development is in the overall sense, which involves all fields of life. Furthermore according to him:

"... the developing society is characterized by change and the role of law in development is to ensure that changes occur regularly. Because, both change and order are twin goals of a developing society, law becomes an indispensable tool in the development process [18]. "

The concentration of the government Of Blitar on the KTR development agenda is the plan to make a Local Government Regulation on KTR that has been made by the local Health Office since 2017, specifically related to the drafting of academic texts and draft of Local Government Regulation, but the submission is delayed due to budget constraints. Then in 2018 a discussion was made that KTR included health facilities, hospitals, schools, places of worship, children's playgrounds and offices. However, at the beginning of 2019, it can only be targeted to be effective at the end of the year; this is due to several obstacles related to infrastructure and tools [19].

Related to the program, Syakmin AK, as quoted by Yacob Djasmani in his writing, said that the use of written law as a means of community development has several advantages including: 1) certainty of stability and order, 2) being more straightforward with what is intended, and 3) must reflect the sense of community justice [20]. These three elements are opportunities for Blitar in the KTR program to comply with the mandate of the law. However, the biggest challenge lies in the role of Legal Drafter in creating KTR legislation that is able to know and understand the interaction between the contents of the law and other social factors that will also affect the effectiveness of the KTR when it will be enacted.

5. Conclusion

By considering the normative-juridical aspects along with the empirical data above, the following conclusions can be a general description that KTR in Blitar still requires a process that is not simple. Even though KTR as an engineering means to change the pattern of smoking-free communities in any place to be a community that follows the KTR, but policy makers from Legal Drafter to other government apparatus, must remain

consistent to explore and find harmony between the interests of government and society.

Obstacles in the application of KTR can certainly be solved through the steps intended to be the recommendations of this paper.

6. References

- [1] Ghufron Maba, *Ternyata Rokok Haram*, Surabaya: Java Pustaka, 2008.
- [2] *Ibid.*,
- [3] Ma'ruf Amin, dkk. *Himpunan Fatwa MUI Sejak Tahun 1975*, Jakarta: Erlangga, 2011
- [4] Fauziyah Ernawati, "Hukum Rokok Perspektif Ulama' Nahdlatul Ulama' dan Muhammadiyah Blitar", Skripsi tidak diterbitkan, S-1 Jurusan Hukum Keluarga Fakultas Syari'ah dan Ilmu Hukum Institut Agama Islam Negeri (IAIN) Tulungagung, (2016)
- [5] blitarkab.go.id
- [6] Bambang S., *Metodologi Penelitian Hukum*, Jakarta: Raja Grafindo Persada, 1998
- [7] Koentjaningrat, *Metode-metode Penelitian Masyarakat*, Jakarta: PT. Gramedia Pustaka Utama, 1994.
- [8] <https://bulelengkab.go.id/detail/artikel/memahami-lebih-dalam-tentang-kawasan-tanpa-rokok-ktr-54>
- [9] Kementerian Kesehatan RI, *Pedoman Pengembangan Kawasan Tanpa Rokok*, Jakarta: Kementerian Kesehatan RI, 2010.
- [10] <https://www.jatimtimes.com/baca/205317/20191125/180900/pemkot-blitar-gelar-advokasi-dan-sosialisasi-ktr-bagi-asn-soal-kawasan-tanpa-rokok>
- [11] *Ibid.*,
- [12] Kementerian Kesehatan RI, *Pedoman Pengembangan Kawasan Tanpa Rokok*, Jakarta: Kementerian Kesehatan RI, 2010.
- [13] <http://p2ptm.kemkes.go.id/post/optimisme-implementasi-perda-ktr-kawasan-tanpa-rokok-di-tengah-pragmatisme-dana-rokok-di-kabupaten-garut>

- [14] *Ibid.*,
- [15] MochtarKusumaatmadja, *Pembinaan Hukum dalam Rangka Pembangunan Hukum Nasional*, Bandung: PT. Binacipta, 1986.
- [16] Lily Rasjidi, *Filsafat Hukum: Apakah Hukum itu?*, Bandung: CV. Remadja Karya: 1988.
- [17] Kementerian Kesehatan RI, *Pedoman Pengembangan Kawasan Tanpa Rokok*, Jakarta: Kementerian Kesehatan RI, 2010.
- [18] Soetandyo Wigyosoebroto, *Dari Hukum Kolonial Ke Hukum Nasional: Dinamika Sosial Politik dan Perkembangan Hukum diIndonesia*, Jakarta: Rajawali Press, 1994.
- [19] blitarkab.go.id
- [20] Yacob Djasmani, "Hukum sebagai Alat Rekayasa Sosial dalam Praktek ber hukum di Indonesia," *Jurnal MMH*, FH Universitas Tanjungpura Pontianak, Jilid 40, Vol.3 Juli 2011.