



## Legal Protection for The People of Buleleng Regency in Providing Smoking-Free Area Services Based on Buleleng Regional Regulation Number 2 of 2015 Concerning Non-Smoking Areas

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### Abstract

This study aims to determine the legal protection for the people of Buleleng Regency in providing smoke-free area services based on Buleleng Regency Regulation Number 2 of 2015 concerning Non-Smoking Areas. In this study, the type of research used is normative legal research by using legal material collection techniques in the form of document studies or literature studies. The approach used in this research is a statutory approach and the sources of legal materials used are primary legal materials, secondary materials, and tertiary legal materials. The results of the study show that the Buleleng Regency Regulation Number 2 of 2015 concerning Non-Smoking Areas has provided legal protection to the community by establishing a smoke-free area, regulating obligations and prohibitions related to non-smoking areas and regulating administrative and criminal sanctions for parties who do not violate no smoking area regulations. So based on this, it is hoped that legal protection for the people of Buleleng Regency in providing smoke-free area services can be fulfilled.

**Keywords:** legal protection, no smoking area, Buleleng Regency

### 1. Introduction

One of the ideals of the Indonesian nation is to create prosperity for the community, which is implied in the meaning of the text of the opening of the Indonesian constitution which is integrated into the 1945 Constitution of the Republic of Indonesia. The benchmark for the welfare of the people of a nation is an increase in standard of living and improvement of public health. The healthier the community and the next generation of the nation, the more prosperous the nation will be.



Therefore, development in the health sector is a priority policy that must be taken by the Indonesian government (Putra, 2020).

As a form of protection of the fundamental rights of society in the health sector, the government is obliged to provide health protection which has been enshrined in the provisions of the 1945 Constitution of the Republic of Indonesia which regulates health as an element of welfare and human rights. Precisely in Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia, it is stated that "everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy living environment and to obtain health services".

This provision determines that the community deserves to get their rights in the form of a clean and healthy environment. However, one of the challenges and obstacles faced by the government in creating a clean and healthy environment is smoking behavior. Smoking is an unhealthy people's lifestyle. This is because cigarettes are products that contain addictive substances (causing addiction), and if consumed can cause damage to the health of the individual and the surrounding community. Cigarettes contain about 4000 types of chemicals, including addictive nicotine and carcinogenic tar which can cause diseases such as cancer, heart disease, impotence, blood diseases, emphysema, chronic bronchitis, pregnancy and fetal disorders, and many more (Kusuma, Yuwono, & Wulan, 2012).

In addition, cigarette smoke is also a health risk for passive smokers (Second-hand Smoke/SHS) or people who are not smokers but are forced to inhale or inhale cigarette smoke released by smokers. Cigarette smoke consists of the main smoke (main stream) which contains 25% levels of hazardous substances, and side streams which contain 75% levels of hazardous substances. Passive smokers inhale about 75% of harmful substances plus half of the smoke exhaled by smokers. Cigarette smoke also contains more than 4000 toxic chemicals and no less than 69 of them are carcinogenic or can cause cancer (International Agency for Research on Cancer, 2004).

Passive cigarette smoke is a very complex substance containing a mixture of gases, fine particles that are released from burning cigarettes. Other people's cigarette smoke (AROL) is very dangerous for people who don't smoke. AROL is smoke that comes out of the end of a lit cigarette or other tobacco product, which is usually a combination of cigarette smoke released by smokers. So passive smokers also have the same high risk as people who smoke (active smokers).

However, the detrimental impact of cigarettes does not dampen smoking behavior among the people of Indonesia. Empirically, based on data from the World Health Organization (WHO), Indonesia in 2008 was ranked 3rd with the highest number of smokers in the world after China and India. Basic Health Research said that 29.2% of the population aged over 10 years smoked and this figure increased by 34.7% in 2010 for the age group over 15 years. The increase in the prevalence of smokers occurred in the age group 15-24 years, from 17.3% (2007) to 18.6% or an

increase of almost 10% (2010). The increase also occurred in the productive age group, namely 25-34 years from 29.0% (2007) to 31.1% (2010) (Widiada, 2021).

Smoking can indeed be said to be a right, but it is not a human right. This is because there is a higher right than the right to smoke, namely the right of everyone to a good and healthy environment. For this reason, it is necessary to find the best solution regarding efforts that can provide protection benefits for the community against the risk of health problems because the environment is polluted by cigarette smoke, both personally and publicly (Khambali, 2017).

So based on this, legally the Indonesian government has issued a policy to protect everyone to obtain a clean and healthy environment from cigarette smoke, namely by stipulating the provisions of Law Number 36 of 2009 concerning Health which requires Local Governments to establish a Smoking-Free Area. Regarding this matter, the Buleleng Regency Government has made a policy that regulates Non-Smoking Areas through the Buleleng Regency Regulation Number 2 of 2015 (hereinafter referred to as the Buleleng Regency Regulation on Non-Smoking Areas).

This regulation aims to provide protection to the people in Buleleng Regency in obtaining their rights in the form of a clean and healthy environment and free from cigarette smoke, namely by establishing a no-smoking area policy in Buleleng Regency. Based on Article 1 point 4 of the Regional Regulation of Buleleng Regency concerning Non-Smoking Areas, the definition of a non-smoking area is a room or area that is declared prohibited for smoking activities or for producing, selling, advertising, and/or promoting cigarettes. Therefore, in this study, we will discuss legal protection for the people of Buleleng Regency in providing smoke-free area services based on Buleleng Regency Regulation Number 2 of 2015 concerning Non-Smoking Areas.

In this study, the research method used is normative juridical research. The normative juridical method is where the law is conceptualized as what is written in legislation (law in books) or the law is conceptualized as a rule or norm which is a benchmark for human behavior that is considered appropriate (Amirudin & Asikin, 2012). This method aims to find the truth of the logic of legal science based on its normative side. The approach used is the statutory approach. The data used in this study were sourced from secondary data where the data was obtained through a literature study in the form of primary legal materials, secondary legal materials, and tertiary materials. This study uses a technique of collecting legal materials, namely document study techniques, then the technique of processing legal materials used is deductive and analyzed using a description technique, namely by describing primary legal materials and secondary legal materials (Wiratmaja, Mangku, & Yuliartini, 2019).

## **2. Discussion and Result**

### **2.1. Legal Protection for the People of Buleleng Regency in Providing Smoking-Free Area Services Based on Buleleng Regency Regulation Number 2 of 2015 concerning Non-Smoking Areas**

According to Soewargono and Djohan, one of the main functions of a government is making public policies (Sadjino, 2008). One of the public policies made in this case by the Buleleng Regency Government is the Buleleng Regency Regional Regulation Number 2 of 2015 concerning Non-Smoking Areas, which is a regional regulation domiciled at the district level. At the provincial level, namely the Province of Bali, there is also a regional regulation that regulates non-smoking areas, namely the Regional Regulation of the Province of Bali Number 10 of 2011 concerning Non-Smoking Areas (Bali Province Regional Gazette of 2011 Number 10, Supplement to the Regional State Gazette of the Province of Bali Number 10 of 2011).

This Buleleng Regency Regulation concerning Non-Smoking Areas was established to carry out the mandate of Law Number 36 of 2009 concerning Health. In accordance with the general explanation of the Buleleng Regency Regulation on Non-Smoking Areas, this arrangement aims to prevent and overcome the adverse effects of cigarette smoke. Article 115 paragraph (2) stipulates that local governments are obliged to establish smoking-free areas, including: health service facilities, places for teaching and learning processes, places for children to play, places of worship, public transportation, workplaces, public places and other designated places. The concept of this regulation is to prohibit smoking, cigarette advertising, and cigarette sales in non-smoking areas as previously described except in public places, it is still not prohibited to buy and sell cigarettes.

According to this regulation, a smoke-free area is the responsibility of all components of the nation, including individuals, communities, government and non-government institutions, to protect the rights of present and future generations to personal health and a healthy environment. Joint commitment from across sectors and various elements will greatly influence the success of a smoke-free area

### **2.2. The Purpose and Principles of Stipulating Non-Smoking Area in Buleleng Regency**

The purpose of establishing a smoke-free area in Buleleng Regency in general is to fulfill the rights of the community by providing legal protection to the community in providing smoke-free area services, especially in the Buleleng Regency area.

As for the guidelines for smoking areas, the objectives of establishing a non-smoking area include the following (Hasibuan & Harahap, 2019).

1. Reducing the morbidity and/or mortality rate by changing people's behavior to live a healthy life.
2. Increase optimal work productivity.
3. Realizing healthy and clean air quality, free from cigarette smoke.

4. Reducing the number of smokers and preventing novice smokers.
5. Creating a healthy young generation.

In addition, based on Article 3 of the Regional Regulation of Buleleng Regency concerning Non-Smoking Areas, it has been stated that the establishment of a smoke-free area in Buleleng Regency has the objectives to: a) provide protection from the dangers of cigarette smoke for active smokers and/or passive smokers; b) provide a clean and healthy space and environment for the community; c) protect public health in general from the adverse effects of smoking, either directly or indirectly; d) create a clean and healthy environment, free from cigarette smoke; improve community welfare; and e) preventing novice smokers.

This smoke-free area in Buleleng Regency is determined based on two principles, namely no smoking space in public places or closed workplaces and exposure of cigarette smoke to other people through smoking activities, or the act of allowing and/or allowing people to smoke in non-smoking areas is something that is illegal against the law.

### **2.3. Form a Non-Smoking Area in Buleleng Regency**

There is no safe limit for exposure to secondhand smoke. So as much as possible the bad effects of cigarette smoke should be prevented and overcome. The Buleleng Regency Regional Regulation on Non-Smoking Areas stipulates the form of a smoke-free area including:

- a. health service facilities;
- b. place of teaching and learning process;
- c. where children play;
- d. worship place;
- e. public transportation;
- f. workplace;
- g. public places; and
- h. another designated place.

Based on this, what are included as health service facilities include hospitals, maternity homes, polyclinics, health centers, medical centers, laboratories, posyandu, and private health practice places. Then the places for the teaching and learning process in question are schools, colleges, education and training centers, job training centers, tutoring and course places. Furthermore, regarding the playground in question, namely play groups, child care, early childhood education (PAUD), and kindergartens.

The determination of non-smoking areas is also included in places of worship for religious people, which include temples, churches, pagodas, monasteries, and mosques/mushola. Public transportation is also included as a smoke-free area, which includes public transportation in the form of city transportation, inter-city transportation, rural transportation, water transportation, public buses, and taxis. In

addition, workplaces such as government and private offices, industries, and workshops are also included as smoke-free areas.

Furthermore, which also includes a non-smoking area is a public place. A public place is a place where many people gather and carry out their daily activities or a place where many people gather to carry out activities either incidentally or continuously, whether paid or not (Sari, n.d.). In this case, what are included as public places are modern and traditional markets, tourist attractions, entertainment venues, hotels, restaurants, recreation areas, bus stops, public transport terminals, freight transport terminals, and sea ports.

#### **2.4. Forms of Legal Protection Regarding Non-Smoking Areas Based on the Buleleng Regency Regulation on Non-Smoking Areas**

The form of legal protection regarding non-smoking areas is based on the Buleleng Regency Regulation on Non-Smoking Areas, by recommending managers, leaders or persons in charge of non-smoking areas to provide special smoking areas. So that there is justice for passive and active smokers.

Then in accordance with the provisions of Article 15, the Regional Regulation requires every manager, leader and/or person in charge of a smoke-free area to:

- a. carry out internal control at the place and/or location for which it is responsible;
- b. prohibit everyone from smoking in the KTR which is their responsibility;
- c. get rid of ashtrays or the like in places and/or locations that are their responsibility; and
- d. put up signs and announcements no smoking according to requirements at all main entrances and in places deemed necessary and easy to read and/or can be heard properly.

The Buleleng Regency Regulation on Non-Smoking Areas also regulates the prohibition intended for the community. Which in the provisions of Article 16 it is stated that every person is prohibited from smoking, and every person/entity is prohibited from promoting, advertising, selling, and/or buying cigarettes in a non-smoking area.

In addition, to provide legal protection to the community, there are also administrative sanctions and criminal sanctions for parties who do not comply with the provisions of the Buleleng Regency Regional Regulation concerning Non-Smoking Areas. The administrative sanctions in question are for persons/entities violating Article 15, in which the sanctions are in the form of verbal and written warnings. Meanwhile, the criminal sanctions in question are for persons/entities who violate Article 16, in which the sanctions are in the form of imprisonment for a maximum of 3 (three) months or a fine of a maximum of Rp. 50,000.00 (fifty thousand rupiah).

### 3. Conclusion

The negative impact of cigarette smoke that can cause diseases such as cancer, heart disease, impotence, blood disease, emphysema, chronic bronchitis, pregnancy and fetal disorders, and many more, requires local governments to create public policies to protect human rights in the field of health. Which includes the human rights of non-smokers to a healthy environment, including being clean from contamination and health risks from cigarette smoke.

Therefore, in this case the Buleleng Regency government has ratified the Buleleng Regency Regional Regulation Number 2 of 2015 concerning Non-Smoking Areas. This regional regulation is intended to provide legal protection to the people of Buleleng Regency in providing smoke-free area services. In this regional regulation there is a determination of a smoke-free area in Buleleng Regency and regulates the obligations of non-smoking area managers and stipulates prohibitions for individuals and entities to smoke and promote, advertise, sell, and/or buy cigarettes in non-smoking areas. In addition, to provide legal protection to the public, this Regional Regulation has regulated administrative sanctions and criminal sanctions for parties who do not comply with or violate the provisions of the Buleleng Regency Regional Regulation concerning Non-Smoking Areas. So based on this, it is hoped that legal protection for the people of Buleleng Regency in providing smoke-free area services can be fulfilled.

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