

Reform of Article 46 Paragraph (3) Letter C of the Broadcasting Law Regarding the Phrase "Prohibition of Advertisements Demonstrating the Form of Cigarettes": Comparative Study With Singapore

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Abstract

This study has been motivated by the weaknesses in the formulation of the Article 46 Paragraph (3) Letter c of Broadcasting Law No. 32 of 2002, which bans only those cigarette ads showing the shapes of cigarettes and leaves room for the tobacco industry to practice indirect advertisement. The focus of this research is to assess the enforcement of limitations on cigarette promotion in broadcasting law and to explore the legal modification of c of Broadcasting Law Article 46 paragraph 3. The method of the study is a normative juridical approach and comparative law method. The findings reveal that current laws in Indonesia have been ineffective in controlling the increase of the smoking population, among the youth in particular, due to a number of issues that the tobacco industry exploits. In contrast, smoking problems are much less prevalent in Singapore which has imposed more stringent policies. Most importantly, the research also discusses that ineffective regulation in Indonesia results from poor enforcement and light punishments offered for violations of the law. Therefore, there is need for restructuring section Article 46 Paragraph (3) Letter c of the Broadcasting Law, by promoting a bitter pill approach towards cigarette advertising, in addition to the current ineffectual position interrogated, to enhance public health.

I. Introduction

Cigarettes are the most frequently discussed object concerning their negative impacts. Women and children often become victims of cigarettes and secondhand smoke. The dangers of secondhand smoke are reinforced by WHO data, which states that the death toll from cigarettes in Indonesia has reached 400,000 people per year (Primawardani, 2012). However, despite the various negative impacts, the ban on cigarette advertisements and promotions has yet to be tightened.

According to Durianto, advertising is a communication process aimed at persuading or leading people to take actions that benefit the advertiser (Arsyad et al., 2020). Advertising is done to build brand image (Moriarty et al., 2014). The same goes for cigarettes; cigarette ads aim to lead people or consumers to purchase the product (Black et al., 1999). Cigarette advertising can lead to an increase in smokers. However, according to Hoek, while cigarette advertising can indeed increase the number of smokers, there is empirical literature stating that cigarette advertising does not directly regulate the number of smokers. Cigarette advertisements primarily serve the tobacco industry in claiming market share influence over their products (Saffer & Chaloupka, 2000).

Chief Justice Rehnquist in *Posadas* isolated cigarette advertising:

"As in Posadas..... the activity underlying the relevant advertising – gambling – implicates no constitutionally protected right; rather, it falls into a category of 'vice' activity that could be, and frequently has been, banned altogether... congress has, for example banned the broadcast advertising of cigarettes, even though it could hardly have believed that this regulation would keep the public wholly ignorant of the availability of cigarettes. (Saffer & Chaloupka, 2000)

This decision is considered the most damaging to the tobacco industry. When a product or service can be labeled as harmful, the government has substantial power to ban the product.

In Indonesia, the government's efforts to reduce cigarette consumption include imposing the highest excise tax rates on tobacco products and establishing various regulations regarding the ban on cigarette advertisements (Sari, 2011). The application of high excise taxes on cigarettes, known as Tobacco Excise Duty (CHT), is implemented to address the impact of cigarettes on society. The high CHT is also intended to allocate funds for addressing the health impacts of smoking (Sari, 2012). However, the prevalence of smoking in Indonesia has not decreased but rather continues to rise (Widati, 2013). Despite the high excise taxes, cigarette consumption has not decreased, as people tend to seek cheaper cigarettes without regard to whether the products are taxed or not. The allocation of funds to health sector

improvements, such as hospital facilities, has proven ineffective if the root cause is not eradicated. Cigarettes not only harm users' health but also those around them (Sari, 2012).

The phrase used in Article 46 Paragraph (3) of Law No. 32 of 2002 on Broadcasting (hereinafter referred to as the Broadcasting Law) is the "promotion of cigarettes demonstrating the form of cigarettes." This phrase is seen as insufficiently explicit in banning cigarette advertisements. As stated in Article 2 of the Broadcasting Law, broadcasting must be conducted based on Pancasila and the 1945 Constitution of the Republic of Indonesia, with the principle of benefit, meaning that broadcasting must contribute to intellectual, moral, and national advancement, as well as maintain unity, while adhering to religious and cultural values. Article 2 also demands responsible and free broadcasting, considering the possible impacts of broadcasting (Sitorus et al., 2017).

This research focuses on comparing regulations between Indonesia and Singapore regarding cigarette advertisement control, aiming to identify legal loopholes in Indonesia and how Singapore's stricter policies can serve as a model for reform in Indonesia. Singapore, a global leader in tobacco control, has implemented smoke-free zones since 1970 and banned cigarette advertisements since 1971, reflecting the country's commitment to public health (Assunta & Chapman, 2004). his comparison is relevant because Indonesia and Singapore are geographically close and are both members of the same regional organization, ASEAN, allowing this study to examine the potential adoption of more effective policies from Singapore to Indonesia (Zulheri, 2013). Although Indonesia has regulations related to cigarette advertisements, enforcement remains lax, allowing tobacco companies to continue covert advertising, whereas Singapore implements stricter controls with significant results in reducing smoking rates.

The prohibition of cigarette advertisements is also regulated under Article XX(a) of GATT, which pertains to exceptions for the protection of public morals. The restriction on cigarette advertising also serves to protect public health. Tobacco cigarettes, as a leading cause of numerous diseases and containing various deadly carcinogens, present a significant public health issue. The protection of public health is addressed through legal obligations. Frank Grad emphasizes that public health law consists of a set of laws with the common purpose of promoting public health (Onzivu, 2000).

This research offers novelty through a legal comparison with Singapore, which has stricter regulations on cigarette advertisements. Through a functional analysis approach, this study explores the economic and legal aspects of cigarette advertising restrictions and proposes a reform of the phrase in Article 46 Paragraph (3) Letter c of the Broadcasting Law. This is supported by recent empirical data showing the

weaknesses of legal implementation in Indonesia. The proposed reform provides concrete solutions to address legal loopholes, making it a new contribution to tobacco control literature in Indonesia. Based on this background, the objective of this research is to analyze the implementation of cigarette advertisement restrictions in the Broadcasting Law, focusing on the effectiveness and challenges in Indonesia, and to examine legal reform of the phrase in Article 46 Paragraph (3) Letter c of the Broadcasting Law. Through a comparative study with cigarette advertisement regulations in Singapore, this research aims to offer more effective legal solutions to strengthen cigarette advertising control in Indonesia.

2. Research Method

This research employs a micro approach with a comparative normative analysis. The comparison is conducted to reexamine the phrase in Article 46 Paragraph (3) Letter c of the Broadcasting Law, which states that the prohibition of commercial advertisement broadcasting is "the promotion of cigarettes demonstrating the form of cigarettes," by comparing it with the regulations in the Tobacco (Control of Advertisement and Sale Act 1993). This study uses a functional method, where the comparison between the legal systems of both countries is carried out to understand the functional reasons for addressing the same issue: the prevention of smoking prevalence through restrictions on cigarette advertising.

3. Results and Discussion

Implementation of Regulations on Cigarette Advertising Restrictions in the Broadcasting Law

The implementation of regulations limiting cigarette advertising in the Broadcasting Law is a multidimensional issue involving legal, economic, and advertising industry reactions (Dewi et al., 2024). Generally, this law is designed to protect public health from the negative influences of hazardous products such as cigarettes. However, its application is not always straightforward and often encounters various obstacles, both in terms of law enforcement and its impact on the broadcasting industry and the economy.

From the perspective of legal frameworks and enforcement, the Indonesian Broadcasting Commission (KPI) is mandated to ensure that broadcasting does not violate regulations, including the ban on cigarette advertising. Although this regulation is clearly outlined in Law No. 32 of 2002 on Broadcasting, its implementation faces many challenges. Many broadcasting media still directly violate these regulations or exploit legal loopholes, such as through hidden sponsorship or advertising formats that imply the promotion of tobacco products. This demonstrates that while regulations exist, strict supervision and enforcement are needed to

enhance compliance.

From an economic standpoint, restrictions on cigarette advertising can affect the revenue of media companies. Cigarette advertisements have become a significant source of income for some broadcasting outlets. With these restrictions, media may experience decreased revenue, which can impact the quality and diversity of the content they produce. Lower advertising revenues may force media outlets to cut production costs, ultimately affecting the quality of programs offered to the public. On the other hand, these regulations are also driven by broader public health interests aimed at reducing cigarette consumption and preventing its negative health impacts. The consideration between the economic interests of the media industry and public health makes the application of these regulations a complex issue requiring a balanced policy approach.

The implementation of cigarette advertising restrictions in the Broadcasting Law, particularly Article 46 Paragraph (3) Letter c, has not been effective. The prohibition that only targets the display of cigarette forms creates loopholes for the tobacco industry to exploit advertising strategies that can still promote products without directly showing the form of cigarettes. This indicates that the tobacco industry can still manipulate public perception regarding the dangers of smoking through subtle and disguised advertising strategies.

There is a lack of decisiveness in imposing sanctions. Although Article 82 of KPI regulations stipulates administrative and criminal sanctions for violations of cigarette advertising outside permitted hours, the reality on the ground shows weak law enforcement. Other factors, such as objections from the advertising industry, further exacerbate the implementation of these regulations, as the advertising industry fears that these rules will hinder creativity and freedom of expression in advertising.

Legal loopholes resulting from the government's vagueness in describing the prohibition of cigarette advertising and the lack of specific regulations concerning cigarette advertising allow the public, particularly tobacco advertisers, to continue seeking ways to promote their products through advertisements. The success or failure of these cigarette advertisements can be observed from the time allocated by the Commission for commercial advertising broadcasts. Article 44 Paragraph (1) of the Indonesian Broadcasting Commission Regulation No. 01/P/KPI/03/2012 regarding Broadcasting Behavior Guidelines states that,

“the broadcast time for commercial advertising for private broadcasting may not exceed 20% (twenty percent) of the total broadcast time each day.”

The allocation of commercial advertising time exceeding that of public service advertisements, which is only 10% of commercial advertising, leads to the possibility that information regarding cigarettes is disseminated more quickly and widely than public service information.

In the formation of this Broadcasting Law, as well as in its derivative regulations such as Article 18 of the Indonesian Broadcasting Commission Regulation No. 01/P/KPI/03/2012 regarding Broadcasting Behavior Guidelines, obligations for broadcasting institutions to comply with provisions regarding the prohibition and/or limitation of programs related to tobacco content, narcotics, psychotropic substances, and/or alcoholic beverages have been established. Article 16 of the Indonesian Broadcasting Commission Regulation No. 02/P/KPI/03/2012 regarding Broadcasting Program Standards also prohibits the presentation of tobacco, narcotics, psychotropic substances, and alcoholic beverages in educational broadcasting programs. Although these derivative regulations also outline sanctions for violations of these provisions, as stated in Article 82 of the Indonesian Broadcasting Commission Regulation concerning Broadcasting Program Standards, the sanctions include:

“Cigarette advertising programs broadcast outside the hours of 21:30 - 05:00 local time, as referred to in Article 59 paragraph (1), which have received written warnings twice, are subject to administrative sanctions in the form of administrative fines of up to Rp. 100,000,000 (one hundred million rupiah) for radio broadcasting services and up to Rp. 1,000,000,000 (one billion rupiah) for television broadcasting services.”

The Broadcasting Law has also established sanctions for violations of Article 46 Paragraph (3), as explained in Article 58 of the Broadcasting Law concerning criminal sanctions of imprisonment for a maximum of 2 years and/or fines of up to Rp. 500,000,000,000 (five billion rupiah) for radio broadcasting and similar penalties for television broadcasting for individuals who:

- a. Violate the provisions as referred to in Article 18 paragraph (1);
- b. Violate the provisions as referred to in Article 33 paragraph (1);
- c. Violate the provisions as referred to in Article 34 paragraph (4);
- d. Violate the provisions as referred to in Article 46 paragraph (3).

Another legal loophole arises from the regulation itself, specifically in Articles 59 Paragraph (1) and (2) of the Indonesian Broadcasting Commission Regulation on Broadcasting Program Standards (SPS), where the article permits cigarette advertising from 21:30 to 05:00, requiring that promotional forms and strategies created by tobacco producers must be categorized as cigarette advertisements. This technical regulation allows cigarette advertising as long as it does not directly display the form of the cigarette.

A survey shows that 82.5% of young people recall having seen conventional tobacco advertisements, with 53.1% of them becoming smokers after being exposed to such advertisements (Widnyana et al., 2021). Meanwhile, exposure to digital cigarette advertising is also relatively high, ranging from 18.2% to 34.3%, which significantly correlates with smoking behavior in the past month (Leung et al., 2023). This high level of exposure indicates that digital cigarette advertising plays a substantial role in encouraging youth to smoke.

From a regulatory perspective, challenges remain in monitoring tobacco advertisements on digital platforms. Digital tobacco marketing is often not tightly regulated, especially regarding age restrictions, causing young people to frequently encounter this content without adequate filtering. This results in an increase in tobacco use among teenagers (Venrick et al., 2023). Some social media platforms, like Snapchat, have even been identified as primary channels for tobacco advertisements targeting youth, demanding stricter and more specific regulatory intervention to address this issue (Fuemmeler et al., 2024).

Suboptimal regulation and weak law enforcement present opportunities for the tobacco industry to expand its marketing strategies through digital platforms. This directly impacts the rising prevalence of smoking among youth, indicating an urgent need for more stringent and comprehensive interventions to mitigate the negative impacts of cigarette advertising in this digital age.

Legal Reform on the Phrase in Article 46 Paragraph (3) Letter c of the Broadcasting Law with a Comparative Legal Study of Singapore

According to Eberle, external law includes written laws established by a country, and legal comparison requires an in-depth analysis of the similarities and differences in laws across various countries (Eberle, 2009).

In Singapore, the Tobacco (Control of Advertisements and Sale) Act 1993 explicitly prohibits various forms of advertising related to tobacco products, including brand names, individual names, and depictions of tobacco products. Violations of these

provisions incur heavy fines and imprisonment, reflecting a very strict approach to tobacco advertising control and efforts to protect the public, particularly the younger generation, from the negative influences of these products.

Article 2 of the Tobacco (Control of Advertisements and Sale) Act 1993 regulates the control of advertising related to tobacco products and imitation tobacco products, clearly stating in Paragraph (1) that:

- 1) Subject to subsection (2) or (6), a person must not publish, or cause to be published, or take part in the publication, in Singapore, of any advertisement
 - (a) containing any express or implied inducement, suggestion or request to purchase or to use any tobacco product or imitation tobacco product;
 - (b) providing a facility for a person accessing the advertisement on the Internet to purchase any tobacco product or imitation tobacco product;
 - (c) relating to any tobacco product or imitation tobacco product or its use in terms which are calculated, expressly or impliedly, to lead to, induce, urge, promote or encourage the use of the tobacco product or imitation tobacco product; or
 - (d) mentioning, illustrating or depicting —
 - (i) the name or trade name of any person associated or concerned with the manufacture, distribution or marketing of any tobacco product or imitation tobacco product;
 - (ii) a brand name of, or trade mark relating to, any tobacco product or imitation tobacco product; or
 - (iii) any pictorial device commonly associated with a brand name of, or trade mark relating to, any tobacco product or imitation tobacco product.

Here, the lawmakers in Singapore explicitly and in detail mention the prohibition of every activity or action related to tobacco products or imitation tobacco products. Even activities involving illustration and the mention of names—whether trade names, individual names, or brand names—related to tobacco products are prohibited.

Anyone who violates Article 2 Paragraph (1) is subject to a fine of up to \$10,000 or imprisonment for a maximum of 6 months, or both. There are exceptions for facility providers where they face double the penalties, namely a fine of up to \$20,000 or imprisonment for a maximum of 12 months, or both.

Meanwhile, Indonesia regulates cigarette advertising through several laws and regulations, including the Broadcasting Law and KPI Regulations, which prohibit advertisements depicting the physical form of cigarettes (Law No. 40/1999; KPI, 2012). However, despite the prohibition, tobacco manufacturers in Indonesia still have room to advertise creatively, such as advertising allowed at certain times and in programs aimed at adult audiences, which can contain promotional elements for cigarettes. Thus, while both countries share an awareness of the importance of regulation on tobacco product advertising, Singapore's approach is far more stringent and comprehensive compared to Indonesia, which offers more freedom to tobacco manufacturers in marketing their products (Bhatia & Sarkar, 2023). This indicates that, despite the intent to limit the negative influence of tobacco advertising, the realization and implementation can vary depending on the legal and social contexts of each country.

Article 46 Paragraph (3) Letter c of the Broadcasting Law states that “commercial advertisements are prohibited from promoting cigarettes that depict the physical form of cigarettes.” This is also governed in its implementing regulations in Article 16 of the KPI Regulation on Broadcasting Program Standards 2012 regarding the prohibition of depicting the consumption of cigarettes and narcotics in educational institutions. Article 13 Letter c of Law No. 40 of 1999 on Press prohibits press companies from publishing advertisements depicting the physical form of cigarettes and/or the use of cigarettes.

Article 27 Paragraph (2) of the KPI Regulation on Broadcasting Program Standards 2012 regulates the restriction of cigarettes in broadcasting programs, where programs containing depictions of cigarette consumption and/or alcoholic beverages:

- a. May only be aired in programs aimed at adult audiences.
- b. Must be presented as negative and/or unlawful behavior and lifestyles, and not depicted as something great and appealing.

The internal legal comparison between Indonesia and Singapore shows significant differences in approaches and implementations of regulations, particularly related to tobacco control. According to Eberle, internal law is influenced by various factors including geography, history, tradition, and other aspects that shape a country's legal system. In Singapore, since the 1970s, the government has issued regulations on smoking bans in public places and bans on tobacco advertising and promotion with the primary aim of improving public health (WHO, 2021). WHO reports indicate that Singapore scores high on compliance with the enforcement of tobacco advertising

bans, with a compliance rate of 10, and a 2019 survey showed adult smoking prevalence was 23.3% for men and 4.6% for women, reflecting the success of this policy (WHO, 2021).

As a WTO member, Indonesia and Singapore are bound by international agreements, including the Framework Convention on Tobacco Control (FCTC), which directs countries to implement comprehensive measures in tobacco control (Bhatia & Sarkar, 2023). Singapore ratified the FCTC in 2005 and has amended tobacco-related regulations before and after ratification, focusing on public health and protecting younger generations from tobacco dangers (Nadhilah, 2016). In contrast, Indonesia has not ratified the FCTC, arguing that it already has Government Regulation No. 109 of 2012, which is considered sufficient, even though data shows a high smoking prevalence of 64.7% for men and 2.3% for women.

One of the underlying reasons for Indonesia not implementing a strict advertising ban is that advertising is considered a product of creativity and commerce that should not be excessively restricted, thus affecting its creative and commercial value (Widnyana et al., 2021). This contradicts consumer protection principles that require consumer rights to be protected by business actors (Miru, 2004). Thus, it can be concluded that the legal approach and tobacco control policies in Singapore are more progressive and integrated with public health norms compared to Indonesia, which is still hindered by complex internal factors.

The urgency of reforming the phrase in Article 46 Paragraph (3) Letter c of the Broadcasting Law is crucial to enhance the effectiveness of existing regulations. According to Law No. 12 of 2011 on the Formation of Legislation, the formation of regulations must be based on good regulatory principles, including clarity of purpose and conformity between the type and material content (Indrati, 2007). In this context, the current phrase in Article 46 Paragraph (3) Letter c, which only prohibits advertisements in the physical form of cigarettes, potentially does not provide maximum protection for the public, contradicting the protective principle that this regulation should uphold. This aligns with the theory of legal effectiveness, which states that the effectiveness of a law is influenced by factors such as the quality of the law itself, law enforcement, and public response to the law.

Although it has been tested in the Constitutional Court, where the request regarding the prohibition of cigarette advertising was rejected, the argument that cigarette advertising is still regarded as a legal action is not strong enough to ignore the urgency of reforming this phrase (Constitutional Court Decision No. 81/PUU-

XV/2017). Reform is necessary to ensure that regulations can function optimally in creating public tranquility, as well as meeting fundamental legal principles and justice for all citizens. Changing the phrase prohibiting cigarette advertisements to “broadcast advertisements mentioning, illustrating, or depicting brand names or trademarks related to tobacco products are prohibited” could be an effective legislative step to reduce smoking rates in Indonesia (Cranston, 1979). Thus, stricter law enforcement through this phrase change is expected to have a significant impact on reducing cigarette consumption and protecting the public from the negative influence of tobacco advertising.

From a legal perspective, this reform is crucial because the current phrase provides a loophole for the tobacco industry to continue promoting their products through subtler means, such as sponsorship in entertainment events and advertising that masks tobacco promotion. In this context, reform is not just about tightening the prohibition on cigarette advertising, but also clarifying legal boundaries that allow for more effective enforcement. Singapore, with its more stringent legal approach, imposes substantial fines and threats of imprisonment for violators of tobacco advertising, reflecting a strong commitment to public health. Indonesia, which still relies on loose regulations, can draw important lessons from Singapore regarding the effectiveness of consistent law enforcement.

From an economic standpoint, restrictions on cigarette advertising can significantly impact the broadcasting industry, which has long relied on cigarette advertisements as a source of revenue. In Indonesia, the media industry still receives substantial income from cigarette advertising, despite existing regulations limiting airing times. However, a stricter phrase reform in the Broadcasting Law will force the broadcasting industry to shift to other revenue sources, which, while possibly impacting short-term profits, will encourage the media industry in the long run to innovate and create healthier and more educational content. In Singapore, despite a total ban on cigarette advertising, the broadcasting industry has still been able to survive by utilizing advertising from other products that are more conducive to public health.

The most significant implication of this reform is on public health. Research indicates that exposure to tobacco advertisements, both in conventional and digital media, contributes to an increase in the number of smokers, particularly among adolescents. Although Indonesia has various regulations concerning tobacco advertising, the reality on the ground shows that law enforcement remains weak. In contrast, in Singapore, stringent regulations have successfully reduced smoking rates, demonstrating that a strong and comprehensive legal approach can lead to tangible

changes. Indonesia, with its high prevalence of smokers, urgently needs this legal reform to mitigate the harmful effects of tobacco on health.

Overall, reforming the phrase in Article 46, paragraph (3), letter c of the Broadcasting Law in Indonesia is urgently required. In addition to aligning regulations with international standards, such as the Framework Convention on Tobacco Control (FCTC), this reform will also strengthen the protection of the community, particularly the youth, from the negative influence of tobacco advertising. With clearer and stricter regulations, it is hoped that law enforcement can be more effective, reduce tobacco consumption, and ultimately improve public health as a whole. Singapore, as an example of a country with successful tobacco control, clearly illustrates the importance of robust and comprehensive regulation in addressing these challenges.

4. Conclusion

Research on the implementation of tobacco advertising restrictions in the Broadcasting Law and legal reforms to the phrase in Article 46, paragraph (3), letter c of the Broadcasting Law, with a comparative legal study of Singapore, concludes that the application of this regulation in Indonesia has not been effective. The phrase prohibiting "the promotion of tobacco that displays the form of cigarettes" is seen as opening loopholes for the tobacco industry to promote their products through subtle means, such as hidden sponsorships or advertising formats that do not directly show cigarettes. Furthermore, weak law enforcement, particularly in terms of administrative and criminal penalties, has led to this regulation not having a maximal impact. In contrast, Singapore has stricter regulations through the Tobacco (Control of Advertisements and Sale) Act 1993, which explicitly prohibits all forms of tobacco advertising, including brand name mentions and product depictions. Strong law enforcement in Singapore has successfully reduced smoking prevalence, especially among the youth. Therefore, legal reforms in Indonesia are urgently needed to strengthen existing regulations. It is proposed that the phrase in Article 46, paragraph (3), letter c of the Broadcasting Law be changed to more explicitly prohibit all forms of tobacco advertising, including indirect advertisements, to provide greater protection for the community and reduce smoking rates in Indonesia.

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