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Rights to Health versus Rights to Work and Livelihood: The Struggle of Tobacco Farmers on Their Economic, Social, and Cultural Rights in Indonesia

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ABSTRACT

Unlike smooth cigarettes (named as white cigarettes in Indonesia), clove cigarettes contain some natural ingredients such as tobacco and clove so that their taste and fragrance sensation even their sense of art have spread over the world, penetrating many countries. Within hundreds of years the tobacco farmers and clove cigarette craftsmen have been surviving in hard situations to make self defense and to depend on this industry.

During the economic crisis striking Indonesia in 1990s, one of industries remained alive and not widely affected by the crisis was cigarette industry. It appeared to be one of the people's economic backbones. Economic contribution of the tobacco sector to the State's revenue is even far beyond the tax revenues contributed by the largest mining companies in the Republic.

Recently, a warm debate about cigarette and tobacco spread out the communities in Indonesia. The prevalence of the Act No. 36/2009 on Health determining tobacco (including cigarettes) as addictive substance and should be avoided had reminded us to the 'nicotine war' phenomenon happening in the U.S. and Europe some time ago. The issuance of the Act on Health and the plan of ratifying the Frame Convention on Tobacco Control (FCTC) emerged is a discourse by health observers, and had led to many debates, protests, and even demonstrations of Indonesian hundreds of thousands of tobacco farmers and cigarette factory workers whose life are highly dependent on tobacco and cigarettes.

This paper will present a discourse between the community's rights to gain healthy life (without cigarettes and tobacco) and people's rights (especially the tobacco farmers) to keep having their work and to get a decent living for humanity's sake guaranteed by the Constitution, laws, and regulations, including the ratification of the International Covenant on Economic, Social and Cultural Rights by Indonesian government.

Keywords: rights to health; rights to work and livelihood; struggle of tobacco farmers; economic, social and cultural rights

A. INTRODUCTION

If we explore and travel around Indonesia, then in a lot of areas we will find tobacco and clove plantations which are raw materials for making 'clove cigarettes'. In contrast to white cigarettes, clove cigarettes, according to a story, is a unique type of cigarettes found by Indonesian people by the end of the 19th century (Topatimasang et.al, 2010, p. 15). It is unique because it is a different from any other kind of cigarettes that exist in the world. Cigarettes generally are just made of slices of tobacco leaves. But clove cigarettes are mixed with chopped tobacco leaves and supplemented with clove hay and seeds. Both of these plants are tropical plants that thrive in Indonesia. Clove is even a native plant of Indonesia. Clove cigarettes are not just cigarettes and in many things are different from other various types of cigarettes, including cigars as written by Mark Hanusz, the author of Kretek: The Culture and Heritage of Indonesia's Clove Cigarettes. Although both are made of tobacco, but clove cigarettes also contain other materials which are not included by any other types of cigarettes (Topatimasang et.al, 2010, p. x). Tobacco thrives in several areas in Sumatra and Java, such as Deli and Temanggung, while clove can be found on the island of Sulawesi and Maluku. From these areas, the raw materials are brought to Kudus in Central Java and Kediri Regency in East Java in which the both raw materials will be processed into clove cigarettes (Topatimasang et.al, 2010, p. 15). This plant is so important that the society consider it as 'green gold' (Suprawati, 2012, p. 201) or 'gold leaf' which is very valuable (Wulandari, 2012, p. 257) because this plant is grown and becomes one of economy supports for the people of Indonesia.

The cigarettes made of clove (*eugenia aromatica*) are so legendary. According to the story of Pramoedya Ananta Toer, in the 1950s, when Haji Agus Salim, one of the Founding Fathers of Indonesia smoked clove cigarettes in a diplomatic banquet in London, the 'unique' aroma encouraged a question from a Western diplomat. "What are you smoking, sir?" Mr. Haji replied "I am smoking something that makes your ancestors came and then colonized our country centuries ago". Clove is a plant aimed by European colonialism. When they conquered, they robbed it from Indonesian people (Topatimasang et.al, 2010, p. xii). Currently, with various movements and global regulations, a form of neo-colonialism, Western people are striving to limit the movement of Indonesian people to produce and use it.

A lot of research, theories and versions try to reveal where the tobacco plant was originated from. In history version, the tobacco plant is considered to come from the Americas. It was brought by European traders to the Indonesian archipelago (Nusantara) at the beginning of 17th century AD. But in Indonesia, particularly in Temanggung, according to the mythology, the plant is believed to be the 'miracle plant' brought from Sunan Kudus by Ki Ageng Makukuhan passing three mountains; Sindoro, Sumbing, and Prau. The community in Temanggung believe the plant received from Sunan Kudus is magical because it did not dried when brought by Ki Ageng Makukuhan during dry season. To honor Ki Ageng Makukuhan, the community, particularly tobacco farmers who live on these three mountains even perform various ritual ceremonies called "*among tebal*". This ritual is performed before the first planting when it is the time for the planting season (Brata, 2012, p. 3-4).

Kretek (clove cigarette) is a part of the community. It is a friend for 'ngaso' (rest) or farmers' break to relax, the opening of conversation between two people who do not know each other and is a symbol of the "gotong royong" tradition of Indonesian society. In 'kenduren' or the folk party, clove cigarettes are one of the 'compulsory menu'. Clove cigarette symbols are so attached to most of Indonesian traditions that it is very well accepted. There is no suspicion on cigarettes whatsoever, and it is even become a part of the society's daily life (Wulandari, 2012, p. 258). According to Aini, clove cigarette, as a commodity, is even considered to have the wisdom frequently referred to as local wisdom. It is one of the media reinforcing the society's "*guyub*" (togetherness) which is in the language of social science called social cohesion (Aini, 2012, p. 218).

In recent years, especially since the enactment of the Act No. 36, 2009 on Health, several claims in the name of health began to undermine the life of tobacco farmers. The negative claims are attributed to tobacco and the 'cigarettes'. These claims are primarily concerned with health issues. It is the certainty that in Indonesia (even in different parts of the world) someone will see the writing on cigarette packs stating that smoking is a dangerous behavior that can cause cancer, heart attacks, impotence and the disorders of pregnancy and fetus or other serious diseases, and even death .

To stop the production of tobacco and smoking behavior, various anti-smoking campaigns were conducted. GATRI or Indonesian Anti-Tobacco and Cigarettes Movement said that the medical community and scholars have agreed that tobacco consumption is one of the causes of death that must be addressed seriously (Dwiarini, 2012, p. 196). Various medical studies, in fact many funded by large pharmaceutical factories, were also performed. In addition, assuring that it could be change, the diversification efforts of tobacco plants with other plants were conducted. Many of them failed. Never plant, do not know agriculture, have never felt the difficulty of farmers' daily life, the health regime simply claim that tobacco agricultural products could be diverted to other agricultural products. The claims that tobacco is the addictives harmful to health are now always campaigned. It reminds us of the nicotine war, which was well expressed by Wanda Hamilton occurred in the United States (and Europe) in 1990s.

On the contrary to health regime proponents, those who defended the tobacco farmers stated that there are so many aspects forgotten by the proponents of the health regime. The ones which are often forgotten in the problems of 'clove cigarette' or 'kretek' according to Topatimasang are the dimensions of historical, cultural and social life of the community. There are four (4) important issues that they claimed as the issues overlooked by the proponents of the health regime. First is the economic problem related to many of tobacco and clove farmers. Millions of people in Indonesia, 'from upstream to downstream', depends on clove cigarette industries. Secondly, when it is reviewed from policy issues, the policies that limit the movement of tobacco farmers and cigarette industry is the policy attempted by foreign parties who have their own 'hidden agenda'. Third, in history, the clove cigarette containing clove flower powder and plants is one of the magnets that make Westerners came to colonize Indonesia. As endemic plants that have high economic value, these plants also form cultural values. Fourth, clove cigarettes are the type of cigarette found by the Indonesian people that should be respected as one of the cultural heritage (Topatimasang et.al, 2010, p. Xi).

Each regime has its own argument. First regime talks on behalf of the right to health, others talks on behalf of the right to work, to have a decent life and to develop the culture. This paper will present a discourse between the community's rights to have a healthy life (without cigarettes and tobacco) as regulated in Act No. 36, 2009 on Health and people's rights (especially the tobacco farmers) to continue having their works and getting a decent living for the sake of humanity guaranteed by the constitution, laws, and regulations. Most data collected in this paper were collected by library research.

B. FRAME CONVENTION ON TOBACCO CONTROL

In 1990s, supported by the World Health Organization (WHO), the international community began to make a movement to control the use of tobacco. This movement reached its peak on 21 May 2003 at the 56th World Health Assembly in which the Framework Convention on Tobacco Control (FCTC) was Adopted by WHO.

The treaty, which is now closed for signature, has 168 signatories, including the European Community, which makes it the most widely embraced treaties in UN history. Member States that have signed the Convention indicate that they will strive in good faith to ratify, accept, or approve it, and show political commitment not to undermine the objectives set out in it. Countries wishing to become a party, but that did not sign the Convention by 29 June 2004, may do so by means of accession, which is a one-step process equivalent to ratification. The Convention entered into force on 27 February 2005, 90 days after it has been acceded to, ratified, accepted, or approved by 40 States. Beginning on that date, the forty Contracting Parties are legally bound by the treaty's provisions (WHO, 2005, p. vi).

In its publication WHO stated that the WHO Framework Convention on Tobacco Control is a landmark for the future of global public health and has major implications for WHO’s health goals. The conclusion of the negotiating process and the unanimous adoption of the WHO Framework Convention on Tobacco Control, in full accordance with Health Assembly resolutions, represent a milestone for the promotion of public health and provide new legal dimensions for international health cooperation (WHO, 2005, p. 35).

From the foreword of FCTC it is stated that the WHO Framework Convention on Tobacco Control (WHO FCTC) is the first treaty negotiated under the auspices of the World Health Organization. The WHO FCTC is an evidence-based treaty that reaffirms the right of all people to the highest standard of health. The WHO FCTC represents a paradigm shift in developing a regulatory strategy to address addictive substances; in contrast to previous drug control treaties, the WHO FCTC asserts the importance of demand reduction strategies as well as supply issues. The WHO FCTC was developed in response to the globalization of the tobacco epidemic. The spread of the tobacco epidemic is facilitated through a variety of complex factors with cross-border effects, including trade liberalization and direct foreign investment. Other factors such as global marketing, transnational tobacco advertising, promotion and sponsorship, and the international movement of contraband and counterfeit cigarettes have also contributed to the explosive increase in tobacco use. From the first preamble paragraph, which states that the Parties to this Convention [are] determined to give priority to their right to protect public health, WHO FCTC is believed to be a global trend-setter (WHO, 2005, p. v).

Article 3 of FCTC stated that the objective of this Convention and its protocols is to protect present and future generations from the devastating health, social, environmental and

economic consequences of tobacco consumption and exposure to tobacco smoke by providing a framework for tobacco control measures to be implemented by the Parties at the national, regional and international levels in order to reduce continually and substantially the prevalence of tobacco use and exposure to tobacco smoke.

Although regarded as one of the conventions mostly participated by countries in the world, no statements in the preamble of FCTC gave consideration on what should be done by the countries, especially developing countries such as Indonesia, or people who are economically dependent on tobacco. The only article that can be referenced on this matter is the statement in Article 4 (6) on the Guiding Principles. It reads: "to achieve the objective of this Convention and its protocols and to implement its provisions, the Parties shall be guided, inter alia, by the principles set out below: (6) the importance of technical and financial assistance to aid the economic transition of tobacco growers and workers whose livelihoods are seriously affected as a consequence of tobacco control programs in developing country Parties, as well as Parties with economies in transition, should be recognized and addressed in the context of nationally developed strategies for sustainable development". It is clear that those who will be assisted are only the countries signing the convention. We could leave our hope for technical and financial assistance as we are not a party of the convention.

C. WAR AGAINST TOBACCO AND CIGARETTES

Since the enactment of Act. No. 36, 2009 on Health by the Parliament, the war against tobacco was implemented by the government, both in central and regional levels. In the Health Act, it is expressly stated that tobacco and all products containing tobacco are addictive substances that should not be used.

There are four (4) articles in the Health Act that governs this case, i.e. section 113, 114, 115, and 116 set out in Chapter 17 on the Security of Addictive Substances. In complete, Section 113 says:

(1) The control in the use of materials containing addictive substances is directed so as not to interfere with and endanger the health of individuals, families, communities, and the environment.

(2) The addictive substances referred to in paragraph (1) include tobacco, tobacco-containing products, addictive solid, liquid, and gas that can be harmful to themselves and / or the surrounding community.

(3) The production, distribution, and use of the materials containing addictive substances must meet the standards and / or determined requirements.

The article clearly states that tobacco is additives substance that can cause harm to public. Although the article explanation does not state that the use of the tobacco materials is in the form of cigarettes, Article 114 states that any person who produces or distribute cigarettes into Indonesian territory shall include health warnings. Thus, Article 113 was intended to limit the use of cigarettes. Article 115 regulates the non-smoking area and the local government's obligations to establish no-smoking areas in their regions. The last article, Article 116, says: further provisions regarding the safekeeping of materials containing addictive substances, are defined by a Government Regulation.

At the end of 2012, Government Regulation No. 109, 2012 on Control of Materials Containing Addictive Substances in Tobacco Products in the Interests of Health was issued.

This regulation is meant to be a guideline for the implementation of the 4 articles state on Act No. 36, 2009 on Health to control of the addictive substance. No doubt that the content of this government regulation is a 'copy-paste' of FCTC contents because all the materials set out in FCTC are elaborated in this regulation. Thus, it is the duty of the government to seriously control and secure tobacco and the products containing tobacco, especially cigarette products at the national level.

Before the issuance of the Health Act, in Jakarta, the Governor Regulation No. 75, 2005 on Smoking Prohibition Zone was issued. The regulation defines several public places banned for smoking such as bus stations, airports, railway stations, shopping centre, hotels, restaurants, workplaces, public transport, places of worship, school and hospital. However, since the issuance of the Health Act, this regulation was amended by the Governor Regulation No. 88, 2010 which states that smoking areas must be physically separated from the main building, located outside the building and located far from the building doorway. This regulation is considered as a highly discriminatory regulation by many people, especially the smokers as it does not provide them a space. This is one of the ambitions of Jakarta to combat cigarette, known with the slogan of Smoke Free Jakarta. Not much different happened in Bogor. With Bogor Smoke Free City slogan, smokers are placeless. Not only the activities of smoking, cigarette sale-purchase activities as well as all forms of tobacco advertising prohibitions are also regulated in Bogor (Indreyani, 2012, p. 191-192).

Following the Regional Government of DKI Jakarta and Bogor, most other regional governments enthusiastically issued the local regulations. With these rules, tobacco products, including clove cigarettes, are placed as a source of 'variety' diseases. This surely also affect on smokers. With this rule, smokers are also automatically placed as a source of social disease that must be eradicated or ostracized so they would not transmit and spread their "virus" to others.

Not satisfied with the endorsement of the Health Act, in 2010, one of the religious organizations issued a recommendation (*fatwa*) stating that cigarettes are the "*haram*" (prohibited) product. In Islam, the word *haram* in tobacco case means that "anyone" who consume this product has conducted a "sin". Although it is only intended for children and pregnant women, those who are not completely aware of this information will assume that the *fatwa* applies to everyone. It is a way of politicizing religion due to a specific purpose. Whether right or still to be proven, some people question the presence of political purposes or particular interests with the issuance of this "*fatwa haram*". After a time it is proven that this religious organization got financial support when issuing the *haram fatwa*. Dwiarini states that Muhammadiyah received fund from foreign parties in the amount of 3.6 billion Rupiah to mobilize public support against "*fatwa haram*" but they did not confess that the fund was related to "*fatwa haram*" of smoking (Dwiarini, 2012, p. 199). Then, it triggered massive protests. Before, at the time and after being issued by the parliament, thousands of tobacco farmers are still doing massive demonstrations all over Indonesia.The protest is based on the premise that there are various types of plants and other products which are addictive. Why only determines tobacco products and plant as addictive? Why only tobacco and the product of tobacco called cigarette are harmful to health?

Many interesting discourse are developed in relation with the determination of this article. My colleague said that the smoke generated by cars contain carbon monoxide (CO) is of course polluting greater than cigarette smoke. The fumes even damage the earth's ozone

layer and become one of the global warming issues. Why cars are not required to include harmful warning on its body? After meal or during rest, why people do not rest in the parking area, in advance starting their cars and inhale the smoke? Indeed it is ridiculous. This is just my colleague's purpose to satirize the rules which are inherently discriminatory as cigarettes are always blamed to people's death. On the other hand, the fat derived from any meat causes high cholesterol to someone and also has the potential of causing a person's death is never blamed. Alcohol that could make people addictive is not set out in this Act. Since the beginning, it is set that only tobacco and tobacco products are forbidden and harmful products. The target is just tobacco. This is why they claim that the policies is discriminatory and has the potential detrimental to farmers.

In her book *Nicotine Wars*, Wanda Hamilton declares that war against nicotine is a war funded by large pharmaceutical manufacturers who want to make profits from health products, named NRT (Nicotine Replacement Therapy) to stop people from smoking. Many people who defend the plight of tobacco farmers stated that what is happening in Indonesia is also the continuation of this strategy. As one of the biggest tobacco and cigarettes consumers in the world, Indonesia has enormous potential consumers for 'nicotine replacement' as currently, there are about 57 million smokers in Indonesia (Barber, 2008, p. 32). Thus the pharmaceutical industries can make millions of dollars profit each year. In the epilogue of Nicotine War book translated into Indonesian Mahal states that Nicotine War or Wanda Hamilton's research and studies present the facts not just predictions or fiction (Mahal, 2010, p. 118). In his opinion, behind the global agenda on tobacco control, drugs trading known as Nicotine Replacement Therapy (NRT) is hidden. There is a very strong indication that the interest of public health campaigns is just a wrap (packaging) of the motive for marketing NRT products. It had been won by an international pharmaceutical corporation having full support from the International Health agency (WHO) and anti-tobacco NGOs. It is arguable whether the reason for the anti-tobacco and anti-cigarette in Indonesia is similar though it is hard to deny that many large pharmaceutical manufacturers are sponsoring research and many other activities to combat nicotine in Indonesia.

The following is a share of Wanda Hamilton's opinion regarding the involvement of the international pharmaceutical corporations on the global war against nicotine (Hamilton, 2001, p. 2, 4):

> The air was decidedly un-smoky at the 11th World Conference on Tobacco and Health in Chicago in early August 2000. Thousands of leading tobacco control advocates from all over the world had assembled to discuss how they might drive Demon Tobacco from the face of the earth. The American Medical Association, the American Cancer Society, and the Robert Wood Johnson Foundation co-hosted the conference, which was billed as 'the world's largest gathering of tobacco-control experts'. Co-sponsors were the American Heart Association, the American Lung Association, the U.S. Centers for Disease Control and Prevention, and the National Cancer Institute. The World Health Organization (WHO) and the United Nations Foundation served as 'honorary hosts'. Gro Harlem Brundtland, Director of the WHO, was even on hand to give a spirited keynote address. Chipping in for a good portion of the funding for the conference as 'primary patrons' were four major pharmaceutical multinationals: Glaxo Wellcome, Novartis, Pharmacia and SmithKline Beecham, all of whom make and/or market 'nicotine replacement' or other smoking cessation products. Johnson &

> Johnson's McNeil Consumer Products, marketers of Nicotrol, was well represented by the Robert Wood Johnson Foundation, which receives almost all its roughly $8 billion from shares of J&J stock. So strong was the presence of the pharmaceuticals that the conference appears to have been more a drug trade show than a legitimate global public health meeting. In addition to putting out numerous self-promoting press releases, the pharmaceutical companies also sponsored symposia, paper presentations, scholarships, a poster session, presentation of a Public Service Announcement ad campaign, sessions on research, and trade booths. ... Given that by the 1980s the public health establishment was already ramping up for a full assault on smoking as a public health issue, the pharmaceutical companies saw a golden opportunity for advancing their own nicotine products as smoking cessation aids. What could be better than having such revered entities as the Surgeon General, the AMA, the American Cancer Society, the American Lung Association, the American Heart Association, the Centers for Disease Control, the National Cancer Institute, other U.S. government agencies (and, later, the WHO) actually help market smoking cessation drugs as part of their smoking eradication programs? And so, by the early 1990s the pharmaceutical companies began building partnerships with the public health establishment.

In his writing, Dwiarini states that one of the biggest fund contributors to anti-smoking campaigns in Indonesia was from foreign parties, name Bloomberg Initiative. The important figure in Bloomberg Initiative is Michael R. Bloomberg, a mayor of New York. He spent millions of dollars to combat smoking in 15 countries. One of the countries that was contributed is Indonesia with a total funding of approximately IDR 39 billions. Bloomberg Initiative engaged in at least 5 (five) organizations, i.e. the Campaign for Tobacco Free Kids, the Centre for Disease Control and Prevention Foundation, the John Hopkins Bloomberg School of Public Health, the World Health Organizations and the World Lung Foundation (Dwiarini, 2012, p . 197).

According to Dwiarini, there are four objectives of Bloomberg initiative; to optimize the cigarette control programs so that people stop smoking and to prevent kids in order not to smoke, to support regulatory and law enforcement efforts such as the cigarette taxation, to prevent smuggling and bad imaging toward smokers, educational campaigns about the danger of cigarette and to build solid system to monitor the growth of smoker number worldwide. The distribution of funds from the Bloomberg initiative in Indonesia was to finance 14 anti-smoking projects ranging from educational institutions, government agencies, community organizations and non government organizations. Several government agencies calling out to support anti-tobacco movement apparently also get a share of donations from Bloomberg initiative. They are the Health Department of Bogor City Government receiving the fund of IDR 2 billions for the campaign of no cigarette area in the last 2 years. The Demographic Institute of the University of Indonesia gets the allocation by IDR 3.6 billion to advocate the policies to control tobacco through pricing policy and effective tobacco tax. The Directorate General of Non-Communicable Disease Control of the Ministry of Health received a total of IDR 4.7 billions to train NCDC teams or National Climatic Data Centre and strengthen the capacity in developing and implementing tobacco control strategies in at least seven provinces in Indonesia. The Association of Indonesian Public Health and Tobacco Control Working Group received the fund as much as IDR 4.4 billions. The National Commission for Child Protection got the share IDR 1.8 billions with the advocacy

activity program to ban tobacco advertising in order to protect children's rights, the advocacy of smoke-free area and the policy of tobacco advertising prohibition in Java. In 2009, the Center for Tobacco Control and Public Health Advertisement obtained IDR 1.1 billion for holding meetings of Non Government Organizations to develop strategic activities in support of tobacco control policies. The Consumer Institution Foundation and The Center for the Religion and Public Study got a total of 4.5 billion by holding sympathetic “no smoking” actions (Dwiarini, 2012, p. 198).

Farmers and cigarette factory workers, help by the sympathizers actually could show the economic contribution and the state revenues of tobacco and tobacco products. They said that the state revenues from cigarette excise duty far exceed the amount of big companies’ taxes in this country. The tobacco industries and products were the only businesses and products remained stable and not affected by the economic crisis happened in 1998 (Sigit Djatmiko, 2010, p. v). However, it does not seem to be considered. The demonstration and protest according to writer’s opinion shows the early sounds of “war”. The real war will begin in upcoming years when this Government Regulation is effectively applied.

D. CLOVE CIGARETTE AND TOBACCO IN INDONESIAN ECONOMY

Approximately 70 percent of Indonesian population lives in rural areas in which agriculture is the main source of income. Poverty is increasingly concentrated in these areas; 16.6 percent of rural people are poor compared with 9.9 per cent of urban populations. Millions of smallholder farmers, farm workers and fishers are materially and financially unable to tap into the opportunities offered by economic growth for years. They are often geographically isolated and lack of access to agricultural extension services, markets and financial services. Food production is still largely focused on fulfilling subsistence needs. Although the country produces crops with a potentially high market value such as cocoa, coffee, nutmeg and cloves, there has not been the level of investment in management, processing and marketing systems, which are necessary to expand production and take full advantage of the demand (Arnold, 2013, p.2).

National Central Bureau of Statistics recorded the number of poor people in Indonesia in September 2012 reached 28.59 million people, equivalent to 11.66 percent of the total population of Indonesia. 14.70 percent of the total poor population is recorded to live in rural areas and 8.60 percent live in urban areas. From the number, Java island is recorded having the most poor people, which reached more than 15.22 million people (Statistic News Release No. 06/01/ year XVI, January 2, 2013). It is inevitable that farmers, including many tobacco farmers, are still struggling with poverty. This happens because the agricultural pattern used is still in monoculture. In addition, it also occurs caused by impartiality of the policy makers to Indonesian tobacco farmers (APTI, 2010, p. 1).

Sudaryanto, Hadi and Friyatno in their research stated that although the role of agribusiness of tobacco and cigarette industry in the creation of output value, value added, and employment is less significant in the national economy, but the both sectors have quite big multiplier effect. The multiplier effect for tobacco agribusiness workforce is larger than tobacco industry. Tobacco agribusiness is able to attract the upstream and encourage downstream sectors to develop, while tobacco industry is only able to encourage downstream sector. Both sectors (especially tobacco industry) contributed approximately 7% of the domestic revenues (APTI, 2010, p. 2-3).

The following is an example that tobacco farming has a multiplier effect that drives the local economy. The data from the Department of Industry, Commerce and Cooperatives of Temanggung District recorded 6,801 business units directly related to agriculture and trade in tobacco. This amount consists of 3,244 business units of drying and processing tobacco, 3,505 units of the business in making baskets for tobacco, 37 business units tobacco chopping, 7 business units of cloves chopping, 7 business units of clove production, and 1 business unit of local cigar maker. The cash flow and economic activity driven by the tobacco farming do not only stimulate the activities directly related to it, such as the supplier of seeds, fertilizers, pesticides etc, but also drive other sectors such as transport and trade. In harvest time, hundreds of small trucks rented by dozens of small and medium scale businesses feel the benefits. When the harvest season comes, everybody take part and benefit from the tobacco harvest (Topatimasang, 2010, p. 31-32, 37-38).

Based on Rais's research results, the average export of cigar tobacco (na-Oogst) in Indonesia from 2002 to 2006 reached 11,977.7 tons, for voor-Oogst reached 21729.9 tons. For the processed tobacco reached an average of 8,998 tons with the value of US$ 47,586 million. The cigarette materials exported is the rest of the local market, which the quality does not meet the criteria for the needs of the domestic cigarette factories. Meanwhile, during the year of 2002-2006, processed tobacco imports, in average, reached 8,945.2 tons with the value of US$ 56.6 million (APTI, 2010, p. 3).

The industries of tobacco products or cigarette industries are included into one of the largest tax payers in Indonesia. At the same time, cigarette excise duty continues to show increasing amount compared to other sources which are state revenues from taxes. In 2008, the Directorate General of Customs and Excise Duty, Ministry of Finance of the Republic of Indonesia reported the state revenues from tobacco excise duty at IDR 57.0 trillion, 43.54 trillion in 2007 and 42.03 trillion in 2006 (Topatimasang et.al, 2010, p. 1-2). In other literature, it is mentioned that the industry is able to absorb the workforce of 824 thousand people, or able to provide employment in the industrial sector and other services approximately 10.35 million, and in the last five years, the tobacco industries contributed the exports about US$ 227.5 million per year (APTI, 2010, p. 5).The tobacco industries and related industries are major sources of foreign exchange, revenues from taxes and excise duty. The tobacco industries in 2008 reached more than 57 trillion dollars. In the national budget of 2010, the government targeted the revenues from excise duty to IDR 55.9 trillion. To pursue these targets, the government, started from 2010, raised the cigarette excise duty. The realization of tobacco excise duty for the period from 1 January 2009 to 13 November 2009 was IDR 48.44 trillion, or 91 percent of the state revenue target in the Revised National Budget (APBN-P) of 2009 by Rp 53.3 trillion. Advertising expenditure incurred for the tobacco industry in 2008 reached approximately IDR 1.4 trillion (APTI, 2010, p. 5-6). It is a fantastic numbers and money, and the numbers of expectations and hope of the people in Indonesia.

University of Indonesia Demographic Institute stated that six large hand-rolled and kretek machine-made firms contributed some 88 percent of total revenues (Barber et.al, 2008, p. 2). All these firms are located in Java Island. In 2007, the Directorate General of Customs recorded the largest share (86.38%) of government's revenue from cigarette excise duty obtained from 8 (eight) producers of first class cigarette with the volume reaching 173 billion cigarettes per year. The huge amount of state revenue from tobacco excise duty is due

to the high consumption of tobacco in Indonesia. Indonesia has the fifth rank among the countries with the largest cigarettes consumer in the world-after China, USA, Russia and Japan. Serad noted that at least 1.25 million people work in tobacco farm as a starting point for the tobacco industry chain. Meanwhile, more than 1.5 million workers are absorbed in the clove plantations which are also the raw materials for clove cigarette. The sectors that are not directly related to the tobacco industries absorb approximately 24.4 million people. With the additional post-harvest labour, white cigarette industries, distribution channels and retailers, the overall number of workers absorbed in the cigarette industries are 30.5 million people (Topatimasang et.al, 2010, p. 2-3).

E. CIGARETTE AND HEALTH

It does not seem fair if we just question the need of tobacco farmers without revealing the bad side of tobacco and cigarettes, including clove cigarettes.

From the health aspects, there are a lot of scientific research stating that smoking can cause a variety of diseases ranging from cancer, heart disease, respiratory, pregnancy disorders, fatal disorders and even death. Not only active smokers, but smoking can also affect the health of people around the smokers by inhaling cigarette smoke which is often called as secondhand tobacco smoke, and the rest of smoke odours is often called third hand smoke.

In the website of American Cancer Society, it is stated that there is no safe level of exposure for secondhand smoke, which is also called environmental tobacco smoke. Passive smoking (inhaling secondhand smoke) happens when non-smokers breathe other people's tobacco smoke. This includes *mainstream smoke* (smoke that's exhaled into the air by smokers) and *sidestream smoke* (smoke that comes directly from the burning tobacco). Secondhand smoke contains the same harmful chemicals the smokers inhale. It's known to cause lung cancer in non-smokers, and has been linked to other cancers and health problems in non-smokers, too. Children and babies are at special risk: those who breathe secondhand smoke are more likely to get sick and even die than children who aren't around secondhand smoke. Besides, there are no medical research reports on the cancer-causing effects of cigarette odours, but research does show that secondhand smoke can seep into hair, clothing, dust, and other surfaces. Researchers call this "third hand" smoke. It refers to particles that are left on surfaces after you can no longer see the smoke. These particles can become airborne again when disturbed or they can be picked up by people (especially babies and small children) who touch the surfaces and get particles on their hands and bodies (www.cancer.org).

For active smokers, the health warnings are always included on every pack of cigarettes purchased. Since the issuance of Government Regulation No. 109, 2012, every pack of cigarettes in Indonesia in the future should include the warning of 'no safe level' and 'contains more than 4000 harmful chemicals and more than 43 cancer-causing substances' words.

Whether the statement is right or not, concerning our lack of knowledge on the health science and medicine, we agree on that. However, there is still one thing that blocks; it is the rights of smokers. It is not a new thing along with vigorous anti-smoking campaigns; smokers currently do not have enough space to smoke. In principle, we agree with no smoking areas in certain places and the provision of separate rooms for smokers. However, it

seems that the spaces provided for smokers in many places actually degrade smokers because normally this spaces are so narrow, without ventilation and adequate air circulation. Although they do not violate the law, the smokers have been punished by being put in the ‘prison room’ or 'isolation smoking room'. The regulation on the prohibition of smoking in certain places does not seem to be made more proportional by providing quite comfortable room to smokers without disturbing the rights of others in order not to be second hand or third hand smoke when inhaling cigarette smoke. It will be different when smoking is prohibited thing as narcotics and psychotropic substances. As long as there is no provision that cigarettes are forbidden substances and smoking is illegal, smokers rights should also be respected by providing more comfortable rooms with ventilation and adequate air circulation.

F. RIGHTS TO HEALTH VS. RIGHTS TO WORK AND LIVELIHOOD

In the 1945 Constitution of the Republic of Indonesia, there are chapters which regulate the right to health, namely Article 28H which reads: Every person has the right to live in prosperity physically and spiritually, to reside, and to get a good and healthy environment, and to receive medical care. The right to a good environment and healthy living is to be maintained considering certain hazards caused by tobacco or cigarettes.

However, there are also quite a lot of articles that can be referred from the Constitution regulating the right to survive and live, including the right to work and decent living. Here are some articles that can be referred:

1. Article 27 (2) which reads: Every citizen has the right to work and decent living for humanity.
2. Article 28A which reads: Every person has the right to live and to survive
3. Article 28C paragraph (1) and (2) which reads:
   (1) Every person has the right to develop themselves through the fulfillment of basic needs, the right to education and to obtain the benefits of science and technology, arts and culture, in order to improve the quality of life and for the welfare of mankind.
   (2) Every person has the right to promote themselves in a struggle for their rights collectively to build a community, nation, and state.
4. Article 28D paragraph (1) which reads: Every person has the right to recognition, security, protection, and fair legal certainty and equal treatment before the law.

Not only in the constitution, the right to survive, to work, to a decent living and to a healthy environment are also stipulated in the Act no. 39, 1999 on Human Rights and the Act No. 11, 2005 on the Ratification of the International Covenant on Economics, Social and Cultural Rights.

With reference to the articles of the Constitution, the contents of chapter 113 and 116 of Health Law have been frequently sued and submitted to the Constitutional Court for a judicial review. The lawsuit was submitted on the basis that it has violated constitutional rights, restricted the right to benefit from the cultivation and use of tobacco as well as threatened for those who grow tobacco. It is considered unfair and contrary to the rights of farmers to sustain their life and work. With their constitutional right to survive, to work, to a decent living and to equal treatment before law, in fact it is quite reasonable for tobacco farmers and their defending proponents to question the policy as the policy will impact their livelihood. This regulation is considered discriminatory because only tobacco is stated to be

addictive substance that should be restricted, whereas, there are a variety of other substances that also have addictive nature.

However, all of them are failed. It was rejected and considered by Constitutional Court not contrary to the constitution. The later judicial review was also denied and considered to be *ne bis in idem* because it had been previously reviewed. This rejection among other is stated in the decision of the Constitutional Court No. 19/PUU-VIII/2010 on November, 1, 2011, the decision No. 34/PUU-X/2010 on November, 1, 2011, the decision No. 66/PUU-X/2012 and the decision No. 24/PUU-X/2012 on September, 18, 2012 (http://amti.or.id/2012/09/mk-tolak-permohonan-petani-tembakau/) and (http://www.tempo.co/read/news /2012/09/18/ 173430270/MK-Putuskan-Tembakau-Tetap-Zat-Adiktif). Meanwhile, the health proponents argue with the claim of their rights to a healthy environment. Each proponent has the rights and interests of which is guaranteed by the Constitution.

G. "IMITATIVE" AND "RUSH" LAWS AND GOVERNMENT REGULATIONS

Considering the condition in Indonesia, especially the condition of poverty experienced by farmers and tobacco growers, according to the writer's opinion, both the Act No. 36, 2009 on Health and the Government Regulation No. 109, 2012 on the Control of Materials Containing Addictive Substances in the Form of tobacco products for Health are the examples of 'imitative' and 'rush' policies, or they are too early to be issued. These two policies are the imitation policies issued for the benefit of one group namely the health group or regime. Why 'imitative'? Because this policy was blindly issued only to satisfy modern health regime supported by doctors and international health regime controlling more science or knowledge than tobacco farmers who live and grow only by their instinct. It is obvious that they are the winner of the war. After all knowledge is power.

In general, there are three perspectives or models on the formation of law to clarify the relationship between the law (the act) and the people. The first is a consensus model, the second is pluralist model and the third is conflict model. Each model reflects different views on the origin of rulemaking and the social value. Consensus model relies on the assumption or premise that law is a reflection of the basic values of social life. Thus, the creation and application of law are seen as a legal justification that reflects collective will. The consensus model assumes the existence of general agreement for the human's interest and basic values, but pluralist model recognize the diversity of social groups having differences and competition over interests and values. Because of the existence of such differences, law needs to be made. Furthermore, realizing the need for conflict resolution mechanisms, the community approves the legal structures that can resolve conflict without endangering the welfare of society. According to this perspective, the conflict arises because of the disagreement in substance, but they agree on the origins and how the law works. On the other hand, the conflict model emphasizes the presence of coercion and pressure from the legal system. The legal system is not seen as a neutral tool for resolving disputes, but as a mechanism created by the most powerful political groups to protect and achieve their own interests. Law does not only serve the achievement of certain interests of the group having the power, but also their interests to maintain power or reinforce the status quo (Susanto, 1995, p. 17). Considering the strong position and the knowledge possessed by the proponents of the health regime, the model used to issue this policy is the conflict model. In this case it is

more appropriate to use the pluralist model. It recognizes the diversity among groups with different interest and values.

In line with Susanto's opinion, Otto, Stoter and Arnscheidt distinguished law-making process into 5 (five) categories (Otto et.al., p. 57-62):

1. *the synoptic policy-phases theory*
   This theory is based on the assumption that the law-making process is well organized and well directed process with the purpose to organize the community as a whole. This theory is started from the ideal model of political triad which assumes that the Parliament, the bureaucracy and the government are neutral and politically accountable so that they deserve to be given the task to make laws. For the case of tobacco, it seems that this is not the theory applied. The Parliament, the bureaucracy and the government never seriously prepare other policies to address the impact on the issuance of this policy. For instance, the agricultural diversification policy and opening job vacancies policy that should be issued in advance to compensate losses that will be experienced by tobacco farmers.

2. *the agenda- building theory*
   This theory has bottom-up approach which assumes that the law-making process is the out-come of a social process with many interests (agenda) to be harmonized. This theory assumes that the idea of making laws can not only be monopolized by one actor namely the law-making institutions (Parliament / Government), but it is a long and complex process in which each actor (including the community) must talk to each other. Actors or interest groups will seek support from political parties so that they can influence the political agenda. In developing countries, it is highly dependent on the level of democracy. Behind the making of the two policies on tobacco control, there lies health and healthy living environment agenda which, of course, must be supported. However the protecting farmer agenda is forgotten.

3. *the elite ideology theory*
   The third theory as developed by Allott (1980) states that in many developing countries the political elites often try to transform their less developed societies to impose very ambitious laws without involving or taking into account the condition of society. The political elites are generally inspired by some principles such as unification, modernization, secularization, liberalization and mobilization. This very ambitious agenda generally leads to resistance and stagnation because of its incompatibility with the people's real condition. Regarding the pluralism in society, according to the writer, it seems that both policies governing tobacco are very ambitious and in the future they will lead to continuous resistance from the community.

4. *the bureau-politics theory or organizational politics theory*
   This theory states that the law-making process is a struggle of interests among the different sectors (bureau) in government administration. This model emphasizes the need for government administration as the starting-point. Every bureau in government administration must consider the public interest, but how they accept and perform duties in accordance with the laws or regulations made varies from one bureau to another one. Each bureau generally brings their own interests so that policy is the result of the competition among these bureaus. This is a consequence of disharmony or inter-bureau

rivalry. Based on the fourth theory, it appears that in this case the bureaus or departments in charge at the health, industry and commerce, and labour in Indonesia do not cooperate and at the end they produce un-populist policies.

5. *the four rationalities theory*
   This theory is based on the assumption that a policy or legislation is made based on 4 (four) thoughts, which all of them have their own autonomous logic or rationality. The 4 (four) thoughts are politics, law, economics and science. This rationality of thought can go hand in hand (in harmony), but they can also be opposite each other so that there is a conflict. The thought of science, for instance, can be contrary to law, the law can be contrary to political or economic needs, and so forth. The difficulty that arises is which one should come first and where to begin? Regarding this fifth theory, it seems that the legitimation of the Health Law and the Government Regulation on the Control of Tobacco Products does have its own logic and rationality. Politically, in the eyes of the international community, the Government of Indonesia will be looked seriously to address health issues especially those related to the effects of tobacco. By law, there is a certainty of the rule on the control to the products containing tobacco, especially cigarettes. Health regime clearly has more power with a variety of research on the dangers of using tobacco products or cigarettes. However, economically, the impact that will arise from the issuance of the laws and restrictions on tobacco use will greatly affect farmers.

In addition, the government also has simplified the actual state or condition by simply doing a copy-paste of the FCTC policy. In fact, to be effective, a policy should take into consideration a variety of conditions in the socio-political, socio-economic, socio-philosophical and socio-cultural conditions. We can not just take the whole FCTC materials to be inserted in Indonesia Law. Many issues must be considered. Seidman's mentioned the theory of 'the law of non-transferability of law'. Each country has its own specific problem. So whether it is foreign laws or international law or instruments, it could not be transferred to any country without considering the real context happening there. *The transplanted law may not fit local conditions, and may thus fail to achieve the desired developmental effect'* (Otto et.al, p. 56).

The writer realizes that each proponent or regime indeed has its own rights and interests by the issuance of the policy. However, the government seriously should in advance prepare some programs that could help tobacco farmers solve their problems of poverty before they are enacted. At least the government should conduct in depth study in advance, not just imitate the global trends that could have broad implications for the sustainability of community life. The policy making should consider an equivalent replacement program to deal with the rights that are lost or diminished because of the policy issuance such as agricultural diversification, educating a new agricultural knowledge and skill for the farmer and providing a new job etc. In our opinion, the enactment of the policies, in the future, will cause many infringements such as cigarettes and tobacco smuggling, and/or other forms of fraud and tax evasion. It is obvious that the criminogenic nature of the issuance of these policies was not being considered by the government prior they were enacted.

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KOMPONEN BIAYA YANG DIUSULKAN

NO	KETERANGAN	JUMLAH/ UNIT	NILAI DALAM RUPIAH	NILAI DALAM MATA UANG ASING ($ SINGAPORE)
1.	Fees atau Bench Fee	1 kali	Rp. 2.000.000,--	250 S$
2.	Biaya Transportasi Udara Jakarta -- Bangalore PP dengan penerbangan Kelas Ekonomi (sesuai dengan harga tiket yang telah dipesan)	1 kali PP	Rp. 8.040.000,--	1005 S$ (810 US$)
3.	Biaya Tranportasi Udara Semarang – Jakarta PP dengan penerbangan Kelas Ekonomi (sesuai dengan harga tiket yang telah dipesan)	1 kali PP	Rp. 1.230.000,--	157 S$
4.	Biaya Airtport Tax Luar Negeri	1 kali	Rp. 250.000,--	32 S$
5.	Biaya Pengurusan Visa India	1 kali	Rp. 960.000,--	120 S$
5.	Biaya transpor lokal selama 4 hari di Bangalore India	4 hari x S$ 30	Rp. 960.000,--	120 S$
6.	Biaya penginapan Hotel di Bangalore di Hotel Ashraya selama 4 (empat) hari 3 (tiga) malam sebagaimana direkomendasikan oleh Panitia Penyelenggara	4 hari 3 malam	Rp. 2.240.000,--	280 S$
7.	Biaya konsumsi 2 (dua) kali makan siang (saat keberangkatan dan saat pulang) dan 4 (empat) kali makan malam. Untuk biaya makan pagi telah dicover dalam biaya Hotel.	6 kali x S$ 15	Rp. 720.000,--	90 S$
	TOTAL		**Rp. 16.400.000,--**	**2.054 S$**

Total Biaya yang diusulkan sebesar : # Enam Belas Juta Empat Ratus Ribu Rupiah#