

CONSUMER PROTECTION | RESEARCH ARTICLE

## Consumer Protection Regarding Health Information and Warnings on Tobacco Cigarette Packaging

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**Abstract:** Indonesia is one of the countries that has a cigarette community, it becomes a problem when the packaging on cigarettes does not provide accurate information, this certainly blames consumer protection. This study aims to delineate consumer protection measures regarding tobacco cigarette circulation without providing accurate information. Conducted in a normative framework. The findings suggest that legal protection for cigarette consumers who receive unclear or inaccurate information on cigarette product packaging can encompass preventive and repressive legal measures. Preventive measures are outlined in PP No. 109 of 2012 and PERMENKES No. 28 of 2013, specifically in Article 4 sub-articles c and i. Conversely, repressive measures enable individuals to file complaints with the Consumer Dispute Settlement Agency (known as BPSK) or initiate lawsuits. Furthermore, the responsibility of business actors to provide accurate information is underscored by Decision Number 32/Pid.B/2021/Pt. Pbr. This responsibility extends not only to distributors but also to cigarette manufacturers, such as PT. Leadon International, found in violation of various regulations, including Article 8 paragraph (1) sub-paragraphs a, l, and j of the Godrej Consumer Products Limited (GCPL), in conjunction with Article 14 of Government Regulation Number 109 of 2012, and Article 10 paragraph (2) sub-paragraph a and paragraph (3) of PERMENKES No.28 of 2013. Sanctions for producers should adhere to Article 19, in conjunction with Article 62 paragraph (1) of the GCPL. At the same time, distributors face reprimands for product withdrawals as stipulated in Article 60 paragraph (3) of PP No. 109 of 2012.

**Keywords:** business actors, consumer protection, tobacco cigarettes

JEL Classification: D18, L15, L66,

Article history:  
Received  
March 27, 2024

Revision submit  
April 23, 2024  
May 29, 2024  
June 18, 2024  
June 25, 2024

Accepted  
June 29, 2024

Available online  
June 30, 2024

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### PUBLIC INTEREST STATEMENT

The circulation of illegal cigarettes is an interesting issue to observe. This situation encourages the state, through its devices, to protect consumers from the circulation of tobacco cigarettes, which does not provide correct information according to the consumer protection law and related regulations. Businesses are considered to be responsible for the circulation of cigarettes that do not provide the correct information in their packaged products. One of the important pieces of information is a warning about the dangers of smoking that can interfere with human health. The state guarantees legal protection for cigarette consumers who do not get clear and correct information on their packaging, both preventively and repressively. Preventive protection is regulated in Government Regulation No. 109 of 2012 and PERMENKES No. 28 of 2013 in Article 4 letters c and i.

Meanwhile, repressive protection can be done by making a complaint report to BPSK or making a lawsuit related to the responsibility of business actors for correct information in Decision Number 32/Pid.B/2021/Pt.Pbr. Leadon International. This is because both parties are in the category of business actors who are considered to violate Article 8 paragraph (1) letter a, letter l, and letter j of the Jo UUPK. Article 14 of Government Regulation Number 109 of 2012 jo. Article 10 paragraph (2) letter a and paragraph (3) of Permenkes No.28 of 2013. The sanction should be given is Article 19 jo. Article 62 paragraph (1) of the UUPK and the defendant who is a distributor is subject to sanctions in reprimands and withdrawal of goods listed in Article 60 paragraph (3) of Government Regulation No. 109 of 2012.



## 1. Introduction

Smoking has become ingrained in society, with some individuals considering it an indispensable aspect of daily life (Trisnowati et al., 2018). Annually, the tobacco industry in Indonesia produces 6 trillion cigarettes, catering to 1.3 billion consumers worldwide, 80% of whom reside in low- and middle-income countries. However, tobacco consumption has exacerbated poverty by diverting household funds from essential needs like food, clothing, and shelter (Zafeiridou et al., 2018). According to the Statista Consumer Insights Report, Indonesia had 112 million smokers in 2021, with projections indicating an increase to 123 million by 2030. Over the past decade, there has been a steady rise in adult smokers in Indonesia. The 2021 Global Adult Tobacco Survey (GATS) conducted by the Ministry of Health (KEMENKES) revealed a surge in adult smokers, from 60.3 million in 2011 to 69.1 million smokers in 2021, constituting an increase of 8.8 million individuals. Among these, 3.44% are under the age of 18, comprising 0.11% aged 10-12 years, 1.45% aged 13-15 years, and 8.92% aged 16-18 years as of 2022 (Susenas KOR, 2022).

Aggressive advertising and promotions often encourage excessive and irrational consumption among consumers. This includes the circulation of illegal cigarettes in the Indonesian market, both domestically produced and imported, which lack health warnings and detailed composition information on their packaging. Cigarette products pose significant dangers due to their addictive nature and composition of over 250 substances, some of which are known carcinogens. Consequently, it is imperative for cigarette packaging to include comprehensive information and health warnings, detailing usage guidelines, composition, expiration dates, and other pertinent details to highlight the health risks associated with their consumption. Products failing to meet safety standards can pose serious harm to consumers (Sibadalok, 2014). The non-governmental consumer protection organizations (LPKSM) and the Indonesian Consumers Foundation (YLKI) advocate for increasing cigarette prices to deter consumption, particularly among children and adolescents.

In addition to the efforts of organizations like LPKSM, government supervision is crucial (Article 30 Article 30 Law No. 8 of 1999 Concerning Consumer Protection (UUPK), n.d.). The government's role in regulating, supervising, and controlling the implementation of consumer protection is vital to fostering a conducive environment where the welfare of society can be achieved (Raji et al., 2024).

Consumer protection initiatives reflect the progress and transition from the past to the present. Technological advancements and industrial developments have widened the gap between conventional and modern consumer practices. While conventional societies produce goods through direct and often intimate interactions between consumers and businesses, modern societies witness mass production and consumption, leading to complex consumer-business relationships transcending geographical boundaries (Marschlich & Dhanesh, 2024). Upholding consumer protection laws, such as Law Number 8 of 1999 concerning Consumer Protection (UUPK), is essential for fostering healthy business practices and maintaining a balance of legal protections for both businesses and consumers (Budianto & Wulandari, 2020).

The Godrej Consumer Products Limited (GCPL) mandates that every business actor must include health warnings and composition details on product packaging to protect consumers. This obligation ensures that consumers are informed about the product's composition, thereby averting potential issues associated with reselling goods without adequate explanations regarding composition, usage guidelines, brand names, and

business actors (Feilmayr & Wöß, 2016). An example of non-compliant packaging is observed in cigarettes branded as LUFFMAN, manufactured by PT Leadon International. These cigarettes lack accurate, transparent, and truthful information regarding composition information, health warnings, expiration dates, and other essential product details. Consequently, consumers remain unaware of the substances contained in these products, leading to a lack of consumer protection rights, especially concerning the enforcement of mandatory information disclosure.

The authors believe that research on consumer protection related to health information and warnings on tobacco cigarette packaging is very important because it is directly related to tobacco control efforts and public health protection. Cigarette packaging equipped with clear and firm health warnings can increase consumer awareness about the dangers of smoking, reduce the appeal of tobacco products, and encourage smokers to quit smoking. In addition, this study helps identify the effectiveness of various health alert designs and formats, so that the resulting policies can be more targeted and have a positive impact on reducing the prevalence of smoking.

This research offers novelty by highlighting the importance of law enforcement and monitoring tobacco products, particularly in Indonesia's consumer protection context. This fills a gap in the literature that has previously focused more on the health and economic aspects without specifically emphasizing the legal aspects. The intended output of this research is concrete policy recommendations to strengthen the consumer protection system, including improved regulation and monitoring mechanisms for tobacco products.

This paper aims to investigate the legal framework governing the circulation of tobacco cigarettes that fail to provide health warnings according to the GCPL and related statutes. In addition, it delves into the responsibility of business actors to provide accurate information on tobacco cigarette packaging.

## **2. Literature Review**

### **2.1 Principles of Consumer Protection**

In Article 2 of Law Number 8 of 1999 concerning Consumer Protection delineates consumer protection principles rooted in benefits, justice, security, consumer safety and legal certainty (Iskandar et al., 2019). These five principles form the basis for a collaboration effort in consumer protection that aligns with national development objectives such as the Benefit Principle, Principle of Justice, Principle of Consumer Safety and Security, and Principle of Legal Certainty (Clifford et al., 2019). The benefit principle dictates that all efforts in consumer protection must maximize benefits for both consumers and businesses collectively. It emphasizes that regulatory and enforcement measures should not favor one party over the other but rather ensure that each party, including producers and consumers, receives their rightful entitlements. By doing so, it aims to benefit all levels of society and, in turn, the life of the nation.

The principle of justice aims to facilitate optimal participation from all individuals, providing equal opportunities for consumers and business actors to assert their rights and fulfill their obligations equitably. It underscores the importance of fairness in the regulation and enforcement of consumer protection laws, ensuring that both consumers and business actors (producers) can assert their rights and fulfill their

obligations in a balanced manner. Therefore, the UUPK regulates several rights and obligations of consumers and business actors (Satory et al., 2020).

The principle of balance seeks to establish equilibrium among the interests of consumers, business actors, and the government, both materially and spiritually. This necessitates that regulatory and enforcement measures benefit all parties involved, ensuring that consumers, business actors (producers), and the government derive equitable benefits from consumer protection laws. This principle mandates that the interests of all parties are regulated and realized harmoniously, without any single entity receiving disproportionate protection over others within the nation and state (Syafrida & Hartati, 2021). The principle of consumer security and safety aims to ensure that consumers are guaranteed security and safety in the use, consumption, and utilization of goods and/or services. It necessitates legal assurances that consumers will benefit from the products they consume/use while ensuring that these products do not threaten their lives or property. Therefore, this Law imposes various obligations on producers regarding product production and distribution, as well as stipulating prohibitions to be complied with (Sujono et al., 2022).

The principle of legal certainty aims to ensure that both business actors and consumers obey the law and obtain justice in implementing consumer protection measures, with the state guaranteeing legal certainty. This entails the expectation that the rights and obligations outlined in this Law are effectively realized in everyday life to ensure justice for all parties involved. Therefore, the state bears the responsibility for ensuring the implementation of this Law through its actions. Examining the essence of Article 2 of the UUPK and its elucidation, it is evident that its formulation is aligned with the philosophy of national development, which centers on the holistic development of Indonesian citizens based on the philosophy of the Republic of Indonesia (Jarnawansyah & Rizqi, 2022).

## **2.2 Consumer Rights to Correct Information Based on Article 4 of the UUPK**

According to Article 4 of the UUPK, every product introduced to consumers must be accompanied by correct information to prevent misconceptions about goods and services (Mubarok, 2023). This information can be disseminated through various channels, including verbal communication, media advertising, or clear inclusion on product (goods) packaging. Particularly concerning consumers' safety rights, each product inherently carries risks and necessitates clear usage instructions. Unclear information may constitute fraudulent misrepresentation, characterized by false statements (Anggraini et al., 2022), it is often manifested in vague indicators and misleading statements, and it is commonly observed in products that falsely claim certain benefits.

Troelstrup asserts that consumers now require more relevant information due to several factors, such as increased availability of products, brands, and sellers; higher consumer purchasing power; greater diversity of brands in the market, leading to limited consumer awareness; rapid changes in product models; enhanced transportation and communication infrastructure, facilitating access to various producers or sellers.

Consumers are often categorized into two groups: informed consumers possess a certain level of education, adequate economic resources, and proficient communication skills, enabling them to actively participate in the market economy

(Adkins & Jae, 2010). Due to these attributes, informed consumers are generally responsible and may not require extensive protection. In contrast, uninformed consumers typically have lower levels of education, belong to the lower-middle-class demographic, and lack fluent communication skills, necessitating protection. In particular, it is the state's responsibility to protect such consumers. This also extends to specific consumer groups such as children, the elderly, and foreigners who may not be proficient in the local language.

Trade heavily relies on information dissemination, underscoring the importance of providing accurate, clear, and honest information to all consumers without discrimination (Hiller & Jones, 2022). As technology advances, the amount of information consumers must navigate increases significantly. However, not all consumers can readily access this information, leading to potential disparities that may be exploited by business actors. Hence, consumer protection grants consumers the right to accurate information, encompassing the right to clear, honest, and non-discriminatory information.

### 3. Research Framework

Firstly, the authors determine the relevant key variables from the literature review, secondly, the authors provide an explanation relating to the concept of consumer protection on accurate information in cigarette packaging. Third, the authors reviewed the referenced literature to ensure the conceptual framework was consistent with the findings of the literature review. Finally, the authors conducted discussions or interviews to obtain clear information (Figure 1).

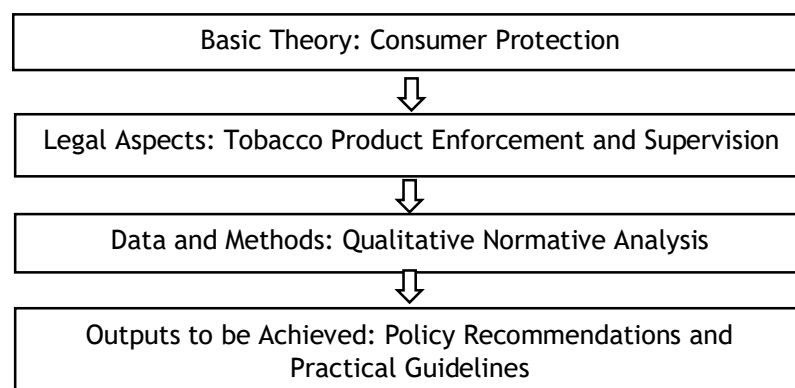


Figure 1. Research framework consumer protection regarding health information and warnings on tobacco cigarette packaging

### 4. Methods

#### 4.1 Research Design

The key legal materials utilized include Law No. 8 of 1999 concerning Consumer Protection, Government Regulation Number 109 of 2012 concerning the Safety of Materials Containing Addictive Substances in Tobacco Products for Health, Minister of Health Regulation Number 28 of 2013 concerning the Inclusion of Health Warnings and Health Information on Tobacco Product Packaging, and Decision Number 32/Pid.B/2021/PT.Pbr. This can be seen in Figure 2.

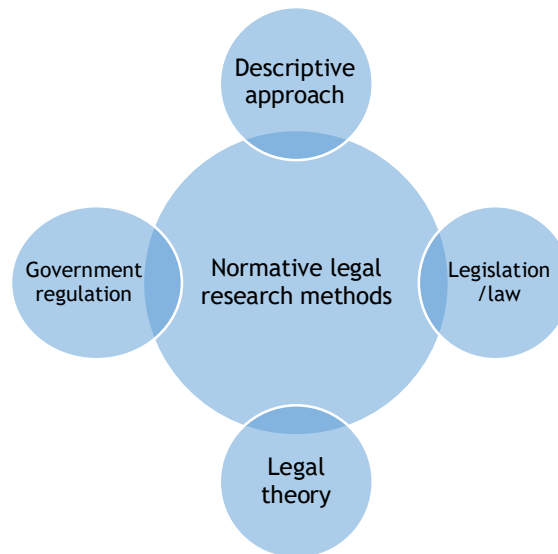


Figure 2. Research design

#### 4.2 Sampling

In this study, non-probability sampling was conducted, the researchers conducted 3 (three) types, namely judgmental sampling, by sampling based on the researcher's knowledge of the sample deemed suitable for the study, consecutive sampling by sampling based on subjects who met the research criteria and were included in the study, and convenience sampling by sampling based on the researcher's expertise.

#### 4.3 Measurement

The authors conducted validation about what consumer protection is against the absence of accurate information in cigarette packaging. Then, collected data to support the research by conducting library research from books, the internet, magazines, newspapers, and interviews with consumers and experts in consumer protection law, then the researchers conducted data analysis to ensure that the data analysis techniques used were by the type of data collected and the objectives of the research conducted.

#### 4.4 Data Collection

In this study, the authors conducted data collection employing library research or library research. A literature study is conducted by examining existing documents, namely by collecting legal materials and information in the form of books, scientific essays, laws and regulations, and other written materials related to this research, namely by searching, studying, recording, and interpreting things related to the object of research.

#### 4.5 Data Analysis

The qualitative method is a research procedure that produces descriptive-analytical data for the formulation of conclusions to obtain answers that can be accounted for. Therefore, researchers will study and sort out current legislation documents, and literature such as books and journals relating to the object of research, namely decision number 32/Pid.B/2021/PT.Pbr.

## 5. Findings

### 5.1 Legal Protection for Circulators of Tobacco Cigarettes Who Do Not Provide Correct Information

Nixon, Mahmoud, and Glantz's previous study in California explained the importance of clear legal protection regulations from U.S. state legislatures that exclusively regulate tobacco regarding tobacco dealers who do not provide correct information (Nixon et al., 2004). Michael et al., in a study conducted in a California community in 1991 and 1992, using published reports, public documents, attendance at public meetings, and interviews, illustrate that the new tobacco industry strategy has hindered the passage of several local regulations on tobacco control to protect consumers both from health aspects and correct information on the effects of cigarettes (Traynor, 1993).

Departing from previous research, as described above. Indeed, consumers and business actors do not always have equal footing, as consumers frequently suffer losses due to violations of legal regulations by business entities. Hence, the existence of Law Number 8 of 1999 concerning Consumer Protection serves as a preventive legal protection measure to safeguard consumer interests. Particularly concerning cigarette products, as noted by Mr. Agus Sujatno from the Indonesian Consumers Foundation (YLKI), cigarettes are considered a distinct category of product (Majmundar et al., 2023), often characterized as abnormal or falling under a sub-standard program, unlike general food and beverage products.

Although sales, production, and marketing of cigarettes are permitted, preventive legal protection measures are outlined in Government Regulation No. 109 of 2012 concerning the Safeguarding of Materials Containing Addictive Substances in the Form of Tobacco Products for Health, and Minister of Health Regulation Number 28 of 2013 concerning the Inclusion of Health Warnings and Information on Tobacco Product Packaging. These regulations aim to protect cigarette users or consumers by imposing restrictions, such as requiring permits for tobacco product production and/or importation, thereby limiting cigarette production to authorized entities for wider community consumption (Witell et al., 2020).

However, despite these regulations, some consumers still do not receive accurate and honest information on cigarette packaging. In a case examined by the author, tobacco cigarettes bearing the LUFFMAN brand produced by PT Leadon Internasional failed to provide correct, clear, and honest information regarding composition, health warnings, and expiration dates on the product packaging, leaving consumers unaware of the product's contents. In the context of consumer protection, as articulated in Article 1 of Law No. 8 of 1999 concerning Consumer Protection, consumer protection encompasses all efforts to ensure legal certainty to safeguard consumer interests.

The consumer rights outlined above, including those of cigarette consumers, entitle them to legal protection against any violations of their rights. However, there's a distinction, as noted in an interview with Mr. Agus Sujatno, Head of the Publication Section at the Indonesian Consumers Foundation (YLKI), who emphasized that the legal protection for cigarette consumers differs from that of food and beverage products. This is because cigarette products fall under the purview of health regulations due to their significant impact on health. Previously governed by Law Number 36 of 2009, cigarette products are now regulated by derivative laws, namely Government Regulation Number 109 of 2012 and Minister of Health Regulation Number

28 of 2013, specifically addressing cigarette products under the Consumer Protection Law.

Nevertheless, upon reviewing Chapter 1 of the General Explanation of the Republic of Indonesia Government Regulation Number 109 of 2012 concerning the Protection of Ingredients Containing Addictive Substances in Tobacco Products to Improve Health, it mandates that the public has the right to receive clear and accurate information and warnings regarding the dangers of smoking and its impacts on health (Giesbrecht et al., 2022).

Despite more than 90% of the public reportedly reading the health warnings on cigarette packaging, nearly half do not believe these warnings, and 26% lack the motivation to quit smoking (Bansal-Travers et al., 2011). Studies conducted across various countries have demonstrated that warnings accompanied by images are more effective than written warnings alone. Therefore, health information should be presented in both image and text formats on cigarette packaging to enhance awareness among both smokers and non-smokers about the health risks associated with smoking (Mays et al., 2015). To be impactful, health warnings must be prominently displayed, relevant, and memorable, and convey essential information that everyone needs to be aware of.

Regarding the legal relationship between consumers and business actors, it is essential to recognize their interdependence, as articulated in Article 1, paragraphs (2) and (3) of the UUPK (Suherman et al., 2023), which state: (2) "Consumer" refers to any individual who utilizes goods and/or services within society, whether for personal benefit, for their family, for others, or other living beings and not for commercial purposes. (3) "Business actor" encompasses any individual or entity, whether legal or non-legal, established or conducting activities within the jurisdiction of the Republic of Indonesia, either independently or jointly through agreements, engaged in various economic sectors.

The elucidation of Article 1, paragraphs (2) and (3) of the UUPK further clarifies: (1) "In economic literature, distinctions are made between final consumers and intermediate consumers. Final consumers are those who ultimately utilize or benefit from a product, whereas intermediate consumers incorporate a product into the production process of another. The consumers referred to in this Law are final consumers." (2) "The definition of business actors includes companies, corporations, state-owned enterprises (BUMN), cooperatives, importers, traders, distributors, among others." From the aforementioned statements, it becomes evident that in every business transaction, business actors and consumers are inherently interconnected.

## **5.2 Legal Relationship between Consumers and Business Actors**

### **5.2.1 Law No. 8/1999 concerning Consumer Protection**

Consumers and business actors are obligated to fulfill their respective rights and obligations to ensure fairness and prevent harm. This is outlined in Article 4 of UUPK, which delineates consumer rights. Specifically, Article 4 sub-article c stipulates the consumer's right to receive correct, clear, and honest information regarding the conditions and guarantees of goods and/or services. Accordingly, business actors are mandated to provide consumers with accurate and transparent information about their products to safeguard consumers from harm. Similarly, consumer obligations are delineated in Article 5 of UUPK, sub-article a, which states: "The consumer must read



or follow the information instructions and procedures for the use or utilization of goods and/or services for the sake of security and safety."

Despite the existence of regulations governing consumer obligations, this fact is evident from field observations and is supported by interviews with Mr. Teguh from the Ministry of Health. Mr. Teguh noted that individuals often exhibit reluctance in reading or adhering to product instructions due to a perceived familiarity with the product. Consequently, upon encountering a similar product, they may assume that its usage instructions or ingredients are identical. Hence, business actors bear obligations as outlined in Article 7, sections a, b, d, and f of the Consumer Protection Law (UUPK). The obligations of business actors include; 1) Demonstrating good intentions in conducting their business activities; 2) Furnishing accurate, transparent, and truthful information concerning the condition and warranties of goods and/or services, along with guiding usage, repair, and maintenance; 3) Ensuring the quality of goods and/or services manufactured and/or traded by applicable quality standards; and 4) Offering compensation, redress, and/or reimbursement for losses incurred from the utilization of traded goods and/or services."

### **5.2.2 Republic of Indonesia Government Regulation Number 109 of 2012 concerning Safeguarding of Materials Containing Addictive Substances in the Form of Tobacco Products for Health**

This Government Regulation addresses the safety of cigarettes, including regulations on cigarette imports into Indonesia. Article 9 mandates that: "Every person who produces and/or imports tobacco products must obtain a permit by statutory regulations." Furthermore, Article 14 of Government Regulation Number 109 of 2012 stipulates: (1) "Every person who produces and/or imports tobacco products into Indonesian territory must include a health warning; This regulation underscores the importance of obtaining proper permits for the production and importation of tobacco products, as well as the mandatory inclusion of health warnings on cigarette packaging (Mostafa et al., 2018). (2) Health warnings, as specified in paragraph (1), must consist of both images and text conveying a singular message. (3) These health warnings, as described in paragraph (2), must be printed as an integral part of the tobacco product packaging. The elucidation accompanying Article 14 further clarifies: "The inclusion of health warnings in the form of images and text on tobacco product packaging aims to effectively educate and inform the public about the hazards associated with tobacco product use."

In the event of a violation of Article 14 of Government Regulation Number 109 of 2012, as outlined in Article 18 of the same regulation, sanctions will be imposed according to statutory provisions. These sanctions, as delineated in Article 60, paragraph (3) of Government Regulation Number 109 of 2012, may entail administrative penalties, including; 1) Verbal warning; 2) Written warning; 3) Product recalls; 4) Recommendations for temporary suspension of activities; and 5) Recommendations for further action by relevant authorities as mandated by statutory provisions."

### **5.3 Legal Relations between Consumers and the Government**

The legal relationship between consumers and the government entails the government's crucial role in disseminating information to the public. Article 29 of UUPK outlines the government's responsibilities towards consumers: (1) "The government is tasked with fostering the implementation of consumer protection,

ensuring the rights and obligations of consumers and business actors are upheld; (2) The government guides consumer protection implementation through the Minister and/or relevant technical ministers." This provision empowers the government to take efficient actions and initiatives in consumer protection. It underscores the government's duty to formulate and execute policies conducive to consumer protection. The Ministry of Health, through agencies like BPOM (Indonesian Food and Drug Authority), plays a pivotal role in monitoring and safeguarding consumer rights concerning cigarettes.

Government Regulation Number 109 of 2012 concerning Safeguarding of Materials Containing Addictive Substances in the Form of Tobacco Products for Health Article 6 of Government Regulation Number 109 of 2012 states: (1) "The Government and Regional Governments, in their respective capacities, are responsible for regulating, organizing, developing, and supervising the safety of materials containing addictive substances in the form of tobacco products for health purposes." (2) The Government and Regional Governments are also tasked with providing access to information and education regarding the safety of materials containing addictive substances in the form of tobacco products for health."

The Elucidation of paragraph (2) specifies that information and education regarding security include public service advertisements. This aligns with the perspective of Mr. Teguh from the Ministry of Health, who highlighted that education and outreach to the public are conducted through various media channels, including public service advertisements. The authorities responsible for supervising cigarette sales in the Indonesian market include the Minister of Health, relevant ministers, and the Director-General of the Food and Drug Supervisory Agency. They undertake efforts to maintain the health standards of tobacco products across different regions in line with their respective responsibilities and functions. BPOM, as a government institution under the oversight of the Ministry of Health, plays a crucial role in supervising drugs, food, and hazardous substances, including tobacco products like cigarettes. BPOM ensures that cigarette products in circulation adhere to relevant laws, including regulations on label composition, packaging, and other health-related aspects (Simanjuntak & Dewantara, 2014).

To address the obligations of business actors, legal protection is provided to consumers who perceive themselves as disadvantaged through the implementation of repressive legal measures. Repressive legal protection entails final protection in the form of sanctions, such as fines, imprisonment, and additional penalties in case of disputes or violations. This protection is stipulated in Article 19 of UUPK, which outlines the responsibility of business actors for losses incurred by consumers due to the goods they trade. Additionally, Article 62 of UUPK addresses violations of Article 8 of UUPK committed by business actors. For specific actions, commercial actors may face criminal sanctions.

Currently, the government, particularly in Tulungagung, East Java, took action on December 14, 2023, by destroying more than five thousand packs of cigarettes, equivalent to 110,940 (one hundred and ten thousand nine hundred and forty) illegal cigarettes confiscated during the period from January to December 2023. This has resulted in significant losses, not only for the state in terms of tax revenue but also for the community itself, as they unknowingly consume cigarettes without knowledge of their contents. Repressive legal protection aims to resolve disputes. Consumers who believe they have been disadvantaged because of their right to information (Hill,

2008) regarding cigarettes has not been fulfilled by the law can lodge complaints with institutions or agencies related to repressive legal protection, including:

1. Court. To address consumer protection disputes, litigation can be pursued through the courts. This is outlined in Article 48, in conjunction with Article 45 (1) of Law Number 8 of 1999 concerning Consumer Protection, which states that: "Resolution of consumer disputes through the courts shall adhere to the provisions regarding general justice, taking into account the provisions in Article 45." "Any consumer who suffers losses may file a lawsuit against business actors through institutions designated to resolve disputes between consumers and business actors, or through the courts within the general judiciary."
2. BPSK (Consumer Dispute Resolution Agency). The Consumer Dispute Resolution Agency is one of the consumer justice institutions in Indonesia tasked with handling and resolving consumer protection disputes. According to Article 49(1), "The government establishes consumer dispute resolution bodies in Level II Regions to resolve consumer disputes outside of court." In an interview with Mrs. Eka Erfianty Putri, a member of BPSK DKI Jakarta, it was emphasized that violations should be reported to BPSK with a complaint offense. The complaint offense applies to individuals who have engaged in transactions, not those without a legal relationship. Therefore, for consumers who have made purchases, proof such as a purchase receipt and the product itself is required. BPSK's role is to restore consumer rights, and if the product fails to meet standards, other sanctions may be imposed, falling under the authority of different institutions.
3. Alternative Dispute Resolution Institutions (LAPS). Alternative Dispute Resolution Institutions (LAPS) are entities that handle disputes outside of court. Article 47 of the Consumer Protection Law regulates matters concerning LAPS. It states, "Consumer dispute resolution outside of court aims to reach an agreement on compensation and/or specific actions to prevent or rectify losses suffered by consumers."

Based on the exposure to the ats, the authors believe, that preventive legal efforts to tackle illegal cigarette products require a combination of strategies and regulations. It aims to reduce illicit cigarette trade and prevent illegal activities in the tobacco market. The government needs to pay attention to several matters, such as; 1) licensing and record keeping, governments can require participants throughout the supply chain, e.g. tobacco farmers, producers, distributors, wholesalers, and retailers to obtain permits, thus imposing obligations or restrictions under threat of administrative, civil, or criminal sanctions; 2) packaging and la unique identifiers and tamper-proof security features, can help prevent counterfeiting and illegal activity, and special packaging and labeling requirements; 3) tobacco product disclosure regulations, manufacturers and importers of tobacco products must submit detailed reports on the components, quantities, and features of their products, which are publicly accessible online. Governments can increase vetting and enforcement efforts by requiring tax stamps or track and trace markers that are easily observable; 4) criminal and administrative responsibility, it is important for various illegal activities related to tobacco products, including smuggling, customs fraud, and unauthorized commercial activities; and 5) public awareness and education, it can provide consumers with information about the health risks associated with tobacco use and the legal consequences of engaging in illegal activities related to tobacco products.

## 6. Discussion

### 6.1 Responsibility of Business Actors for Correct Information in Tobacco Cigarette Packaging Products in Decision Number 32/Pid.B/2021/Pt.Pbr

In the context of decision number 32/PID.B/2021/PT.PBR, Zulfaini, the Defendant, operated as a business actor, procuring LUFFMAN brand tobacco cigarettes from Mr. Buyung (In DPO) for sale, thus profiting from the distribution of these products manufactured by PT Leadon Internasional. However, these cigarettes lack clear information regarding health warnings and excise details, rendering them illegal. Notably, both PT Leadon Internasional and PT Fantastik Internasional are involved in the production and sale of LUFFMAN cigarette products. In decision number 32/PID.B/2021/PT.PBR, which reinforces the prior ruling, Decision Number 578/Pid.B/2020/PN Rhl, the following determinations were made:

- a. "Declaring that Defendant Zulpaini Alias Peni Bin Umar has been legally and convincingly proven guilty of committing the criminal act of trading goods without describing the goods which include composition, rules of use, date of manufacture, side effects, name and address of the business actor and other information for the use which according to the provisions must be installed/made as in indictment one;
- b. Sentencing the Defendant to imprisonment for 8 (eight) months;
- c. Deciding that the defendant is detained;
- d. Determining that the period of arrest and detention that the defendant has served shall be deducted entirely from the sentence imposed;
- e. Determining evidence in the form of:
  - a. 136 (one hundred thirty-six) boxes of red Luffman brand cigarettes;
  - b. 98 (Ninety-eight) silver Luffman brand cigarette boxes to be annihilated
- f. Charging the Defendant to pay court costs for IDR 5,000 (five thousand rupiah)."

Upon comparison with cigarettes circulating in Indonesia, such as DJI SAM SOE (MAGNUM FILTER), significant disparities in packaging become evident, particularly between DJI SAM SOE and LUFFMAN cigarettes (Figure 3).



Figure 3. Front view of Luffman cigarette (left) and Magnum Filter (right)

Firstly, examine the two images in Figure 3, which depict the front views of LUFFMAN cigarettes manufactured by PT. International Leadon and distributed in Indonesia, particularly in Sumatra, and DJI SAM SOE MAGNUM FILTER cigarettes are available nationwide. A notable distinction is evident: LUFFMAN cigarettes lack health warning images but feature health warnings in written form on the side of the packaging. In contrast, DJI SAM SOE MAGNUM FILTER cigarettes display both health warning images and text. In this instance, it's clear that LUFFMAN products have contravened Article 14 of Government Regulation Number 109 of 2012.

Based on the article above, health warnings must encompass both visual imagery and textual content, rather than just one. In an interview with Mrs. Eka Erfianty Putri, a member of BPSK DKI Jakarta, it was emphasized that cigarette packaging should adhere to a 60/40 ratio, with 60% dedicated to health information, including visual depictions of cigarette-related health hazards. The remaining 40% should encompass details about brand trademarks, in compliance with Minister of Health Regulation No. 28 of 2013. Legal provisions outlined in Law No. 8 of 1999 concerning Consumer Protection dictate that product labels must include essential information, aligning with consumers' rights to accurate, transparent, and truthful information (Poernomo, 2024).

Secondly, in contrast to the standards outlined for cigarette packaging, the back packaging of LUFFMAN products lacks an excise label, a mandatory component on cigarette packaging (Figure 4). Both AMTI and YLKI, as confirmed by interview statements, emphasize that cigarettes are classified as excisable goods, subject not only to cigarette tax but also to excise duties. Furthermore, interviews with BPSK reveal that cigarettes lacking excise labels are deemed illegal and therefore ineligible for distribution. Moreover, an additional deviation from regulations is observed in LUFFMAN cigarettes, as the packaging contains information solely in English, omitting Indonesian translations.



Figure 4. Rear view of Luffman cigarette (left) and Magnum Filter (right)

Thirdly, concerning product composition, the packaging of LUFFMAN cigarettes fails to specify the cigarette's composition (Figure 5). While it's understood that listing all 4,000 substances contained in cigarettes may not be feasible, regulations outlined in Article 10, paragraph (2), sub-paragraph a of PERMENKES No. 28 of 2013 state that: "Health Information as intended in paragraph (1) includes the nicotine and tar content placed on one side of the packaging for packaging in the form of rectangular boxes

and boxes with the same width or on the top side of the packaging lid for cylindrical packaging."



Figure 5. Side view of Luffman cigarette (left) and Magnum Filter (right)

Based on the article above, at least the nicotine and tar content should be included on the side of the packaging. The composition of cigarettes is very important because it has a direct effect on the bodies of active smokers and passive smokers. Additionally, interviews with Mr. Teguh Martono from the Ministry of Health reveal that people tend to be lazy or do not pay attention to the product's contents because they think they already know what the product contains. The Ministry of Health has stipulated that products must include clear information so that they are not dangerous products.

Fourthly, the absence of a production code and production date on all parts of the LUFFMAN cigarette packaging further exacerbates the issue (Figure 6). This omission renders it impossible to ascertain when the cigarettes were manufactured and distributed within the community, posing significant risks (Ribisl et al., 2022), especially if they have been in circulation for an extended period. While cigarettes may not have an expiration date due to their toxic nature, the inclusion of a production code enables tracking of the manufacturer in case of consumer harm. Regulations regarding production codes and dates are regulated in Article 10 of PERMENKES No. 28 of 2013 which states that: "Health Information as intended in paragraph (1) includes the production code, date, month and year of production, as well as the name and title of the producer placed on the bottom side of the packaging for packages in the form of rectangular boxes and boxes with the same width side or the bottom side of the packaging for cylindrical packaging."



Figure 6. Displays the bottom of a Magnum Filter cigarette

In terms of consumer protection principles, this case falls under product liability, wherein responsibility arises when consumers suffer losses due to products that do not meet legal standards in Indonesia. This principle hinges on establishing a causal relationship between unlawful acts and resultant losses, consequently, because of PT. LEADON INTERNATIONAL's failure to provide consumers with clear and accurate information, as stipulated in Article 8, paragraph (1), sub-paragraphs a, i, and j, they

neglected their obligation to adhere to the principle of responsibility outlined in UUPK Article 19, which states: (1) "Business actors are accountable for compensating consumers for damages, contamination, and/or losses incurred due to the consumption of goods and/or services they produce or trade. (2) Compensation, as outlined in paragraph (1), may include refunds or replacements of goods and/or services of equal value, cooperative maintenance, and/or compensation according to the provisions stipulated in applicable laws and regulations."

Additionally, regarding criminal repercussions, Article 62, paragraph (1) of UUPK states: (1) (1) "Business actors who violate the provisions outlined in Article 8, Article 9, Article 10, Article 13, paragraph (2), Article 15, Article 17, paragraph (1) subparagraphs a, b, c, e, paragraph (2), and Article 18 are subject to a maximum imprisonment term of 5 (five) years or a maximum fine of Rp. 2,000,000,000.00 (two billion rupiah)." Furthermore, administrative sanctions as per Article 60, paragraph (3) of PP No. 109 of 2012 may apply to business actors who violate regulations concerning tobacco products, particularly cigarettes lacking clear health warnings (Juruš et al., 2018). These sanctions can manifest as; 1) Verbal warning; 2) Written warning; 3) Product recalls; 4) Recommendations for temporary suspension of activities; and 5) Recommendations for action to relevant authorities as per statutory provisions.

The aforementioned article was also endorsed by the Ministry of Health and BPSK, where the Ministry of Health will issue a notification to the manufacturer regarding the nonconformity, prompting the manufacturer to withdraw the product and conduct a self-audit to identify any errors on their part. Initially, this action serves as a warning, as confirmed by BPSK. Reflecting on the aforementioned case reveals significant shortcomings in supervising the distribution of non-compliant cigarettes under the provisions of UUPK, PP Number 109 of 2012, and PERMENKES Number 28 of 2013. This observation was concurred with by the four agencies interviewed: the Ministry of Health, AMTI, YLKI, and BPSK. They highlighted a lapse in field supervision when cigarettes were distributed in violation of established regulations. According to Mr. Teguh from the Ministry of Health, several factors contribute to this phenomenon, such as 1) Insufficient public awareness regarding the hazards of illegal cigarettes; 2) Individual retail sales of cigarettes in Indonesia; 3) Deliberate smuggling of illegal cigarettes due to their affordability and high content. LUFFMAN cigarettes, for example, are priced at only IDR 10,000 per pack of 20, while DJI SAM SOE MAGNUM FILTER cigarettes cost IDR 25,000 per pack of 12; 4) Presence of LUFFMAN product sales on e-commerce platforms, facilitating their dissemination to Java Island.

Considering the factors mentioned above, it becomes evident that field supervision of these cigarette products remains inadequate. While business actors may argue that such products are only circulated within the city of Batam, which is an FTZ (free trade zone) exempt from excise tax, the existence of these products outside Batam indicates a deficiency in law enforcement supervision. Additionally, several other cities, such as Bintan and Karimun Island, also serve as FTZs, potentially facilitating the illegal distribution of cigarettes to other regions in Indonesia. The absence of an excise tax on cigarette products could result in significant losses for the state, impacting Indonesia's economic sustainability (Graafland & Wells, 2021). Despite AMTI's claim that they consistently pay the requisite excise tax for cigarette products, illegal products lacking excise stamps violate Article 29 of the Excise Act, which prohibits the sale of cigarettes without proper excise tax payment verification. Therefore, if you sell cigarette products that do not have an excise band, you have

violated the provisions of the law regarding excise violations listed in Article 54 of the Excise Act which states that: "Any person who offers, delivers, sells or makes available for sale excisable goods that are not packaged for retail sale or are not affixed with excise stamps or are not affixed with other excise payments as referred to in Article 29 paragraph (1) shall be punished with imprisonment for a minimum of 1 (one) year and a maximum of 5 (five) years and/or a fine of 2 (two) times the value of the excise tax and a maximum of 10 (ten) times the value of the excise tax that should have been paid."

Despite efforts by the four agencies to conduct public awareness campaigns through direct community engagement and media channels, the community's awareness remains insufficient, leading buyers to persist in purchasing illegal cigarette products. This lack of awareness is compounded by the absence of written coordination between the Ministry of Health, Ministry of Trade, and Ministry of Finance regarding collaborative efforts in cigarette control, hampering the effectiveness of awareness campaigns.

## **7. Conclusions**

The theoretical implications of this study suggest that consumer protection should be seen as an integral part of a legal system that includes principles and rules to govern consumer relationships and interests. In terms of policy, the importance of strict law enforcement and government oversight to ensure that tobacco products fulfill safety standards and provide adequate information to consumers. Limitations of this study include a limited focus on tobacco products in Indonesia without comparing them with consumer protection policies in other countries, as well as data that may not reflect the current situation given rapid regulatory and technological developments.

The legal protection afforded to consumers of cigarette products who do not receive clear and accurate information on their packaging encompasses both preventive and repressive measures. Preventive protection is enshrined in Law Number 8 of 1999 concerning Consumer Protection, Government Regulation No. 109 of 2012 on the Safety of Materials Containing Addictive Substances in Tobacco Products for Health, and Minister of Health Regulation No. 28 of 2013 concerning the Inclusion of Health Warnings and Information on Tobacco Product Packaging. These regulations establish consumer rights, including the right to receive correct, clear, and truthful information, as outlined in Article 4, sections C and I. The information provided must adhere to the standards outlined in Government Regulation No. 109 of 2012 and Minister of Health Regulation No. 28 of 2013.

## **8. Recommendation**

The responsibility for ensuring accurate information on tobacco cigarette packaging, as outlined in Decision Number 32/Pid.B/2021/Pt. Pbr, should not solely rest on the Defendant, who is a distributor, but also on the manufacturer of these cigarettes, PT. LEADON INTERNATIONAL. The manufacturer's violation of Article 8, paragraph (1), sub-paragraphs a, i, and j of the GCPL, in conjunction with Article 14 of Government Regulation Number 109 of 2012 and Article 10, paragraph (2), sub-paragraph a, and paragraph (3) of PERMENKES No. 28 of 2013, warrants sanctions as stipulated in Article 19, in conjunction with Article 62, paragraph (1) of the GCPL. Meanwhile, the distributor, as the Defendant, is subject to sanctions such as warnings and product withdrawal, by Article 60, paragraph (3) of PP No. 109 of 2012.



### Citation information

**Cite this article as:** Anggraini, A. M. T., Purnamasari, D., Putra, D. A., Sabirin, A., & Elizaga, J. R. Y. (2024). Consumer protection regarding health information and warnings on tobacco cigarette packaging. *Journal of Consumer Sciences*, 9(2), 247-265. <https://doi.org/10.29244/jcs.9.2.247-265>

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