

LEGAL SANCTIONS FOR SMOKERS WHO SMOKE IN PUBLIC PLACES IN PHILIPPINES

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ABSTRACT:

Every person has the right to freedom including smoking as stated in Section 11 of Article II of the 1987 Constitution of the Republic of the Philippines declares that the State values the dignity of every human, person and guarantees full respect for human rights, but the facts on the ground are actually prohibited by smoking. The problem in this study is how the legal sanctions for smokers who smoke in public places. This research method uses a normative juridical approach, with data collection from literature study. The data obtained were analyzed qualitatively. Based on the results of the study it was found that the Philippine Government is only limiting smoking behavior, which is devoted to public places only. The government imposes a fine for smokers up to ₱ 10,000 (US \$ 200) for violations of the smoking ban in public places as prescribed in section 32 of the Tobacco Regulation Act for perpetrators. Enforcement can be performed by members of the Philippine National Police and the local task forces of each city and municipality. Even so, that does not mean that everyone should not smoke. The public may smoke as long as it is done in quiet places and may be done at home.

Keyword: *legal sanction; smoker; public places.*

INTRODUCTION

Lifestyle is broadly defined as a way of life that is identified by how people spend their time, what they think about themselves and the world around them. Therefore, this is related to actions and behavior from birth. The lifestyle of each group will have its own unit characteristics. If there is a change in lifestyle in a group it will have a broad impact on various aspects of health development began to face new patterns of disease, namely the increase in cases of non-communicable diseases that are triggered by lifestyle changes such as excess sugar, lack of physical activity (sports) and consumption cigarettes whose prevalence continues to increase.

Tobacco / cigarettes kill half of the life span of smokers and half of smokers die at the age of 35-69 years. According to the World Health Organization (WHO) in 2008, Indonesia has been ranked as the third largest country as a cigarette user. More than 60 million people in Indonesia also experience helplessness due to the nicotine addiction to cigarettes. Most smokers who start smoking 15-19 years tend to decrease with increasing age, as well as children aged 5-9 years.

Smoking is everyone's freedom, but this freedom has been restricted so from the point of view of smokers this is very unfair given the rules contained in Section 11 of Article II of the 1987 Constitution of the Republic of the Philippines declares that the State values the dignity of every human, person and guarantees full respect for human rights.

On the other hand, the negative effects arising from smoking do not make smokers eliminate smoking behavior. There are a thousand and one reasons for smokers to defend themselves when asked why they keep smoking despite knowing the consequences of smoking. No one denies the negative impact of smoking behavior, but smoking behavior for human life is a "phenomenal" activity, meaning that although they already know the dangers of smoking, the number of smokers is not decreasing but is increasing and the smokers are getting younger.

In addition to the right to freedom of smoking, there are also healthy rights. This is what makes the legal imbalance where one side has been burdensome. In other countries, such as Beijing, Tokyo and Jakarta, there are still leeway to smoking and only in hospitals that are subject to legal sanctions while in other public places.

Problem

The formulation of the problem in this study is how legal sanctions for smokers who smoke in public places.

Research Methods

This research method uses a normative juridical approach, with data collection from literature study. The type of research design used is Descriptive Design. The data analysis technique in this study uses a qualitative analysis technique, which is a method that emphasizes the aspect of in-depth understanding of a problem rather than looking at the problem for generalization research.

Discussion

Executive Order No. 26, entitled Providing for the Establishment of Smoke-Free Environments in Public and Enclosed Places, was issued by Philippine President Rodrigo Duterte on 16 May 2017. This executive order invoked the Clean Air Act of 1999 and the Tobacco Regulation Act of 2003 to impose a nationwide ban on smoking in all public places in the Philippines. The ban replicates on a national level an existing ordinance in Davao City that Duterte created as mayor in 2002. The order took effect on 23 July 2017, 60 days after its publication in a newspaper

Section 3. Prohibited Acts, The following acts are declared unlawful and prohibited;

- a. Smoking within enclosed public places conveyances, whether stationary or in motion, except in DSAs fully compliant with the requirements of Section 4 of his Order;
- b. For persons-in-charge to allow, abet or tolerate smoking in places enumerated in the preceding paragraph, outside of DSAs fully compliant with Section 4 of this Order;
- c. For any person to sell, distribute or purchase tobacco products to and from minors. It shall not be a defense for the person selling or distributing that he/she did not know or was not aware of the real age of the minor. Neither shall it be a defense that he/she did not know nor had any reason to believe that the cigarette or any other tobacco product was for the consumption of the minor to whom it was sold;
- d. For a minor to smoke, sell or buy cigarettes or any tobacco products;
- e. Ordering, instructing or compelling a minor to use, light up, buy, sell, distribute, deliver, advertise or promote tobacco products;
- f. Selling or distributing tobacco products in a school, public playground, youth hostels and recreational facilities for minors, including those frequented by minors, or within 100 meters from any point of the perimeter of these places;

- g. Placing, posting, displaying or distributing advertisement and promotional materials of tobacco products, such as but not limited to leaflets, posters, display structures and other materials within 100 meters from the perimeter of a school, public playground, and other facilities frequented particularly by minors, hostel and recreational facilities for minors, including those frequented by them, or in an establishment when such establishments or its location is prohibited from selling tobacco products.
- h. Placing any form of tobacco advertisement outside of the premises of point-of-sale retail establishments; and
- i. Placing any stall, booth, and other displays concerning tobacco promotions to areas outside the premises of point-of-sale locations or adult-only facilities.

The order restricts and penalizes the act of smoking tobacco products in enclosed public places and public conveyances, whether stationary or in motion, except in certain designated smoking areas. It requires that all public buildings or places that are accessible or open to the public regardless of ownership or right to access must be smoke-free inside and within 10 meters (33 ft) from entrances and exits or where people pass or congregate, and from air intake ducts. This includes but is not limited to:

- a. Government buildings,
- b. Schools, colleges and universities,
- c. Offices and other workplaces,
- d. Restaurants and other food and drink establishments,
- e. Hotels and other accommodation facilities,
- f. Hospitals, health centers, clinics and nursing homes,
- g. Transportation terminals,
- h. Churches,
- i. Shopping centers, retail stores and other merchandise establishments,
- j. Entertainment establishments,
- k. Sports venues,
- l. Other establishments that provide professional services.

Public conveyances include buses and jeepneys, taxicabs, tricycles and other public utility vehicles, rail transit, airplanes and ships. The order also prohibits smoking in all outdoor spaces where people gather such as parks, playgrounds, sidewalks, waiting areas, open-air markets and resorts.

The order also covers existing bans on the sale, distribution and purchase of tobacco products to and from minors, or persons below 18 years old, as well as the restrictions on cigarette advertisements and promotions under the Tobacco Regulation Act.^[4] It also instructs all local government units to form a "Smoke Free Task Force" to help enforce its provisions.

Penalties

The order imposes fines of up to ₱10,000 (US\$200) for violation of the smoking ban in public places as prescribed in section 32 of the Tobacco Regulation Act. Enforcement can be performed by members of the Philippine National Police and the local task forces of each city and municipality.

- a. ₱500 – ₱1,000 for first offense
- b. ₱1,000 – ₱5,000 second offense

- c. ₱5,000 – ₱10,000 for the third offense plus revocation of business permit or license to operate of the violating establishment

Designated smoking areas

Section 4 of the EO details the standards required for designated smoking areas (DSA) in public places:

- a. DSAs shall have a combined area and buffer zone not larger than 20 percent of the total floor area of the building but not smaller than 10 meters (33 ft)
- b. DSAs shall have no opening that will allow air to escape to the smoke-free area of the building or conveyance
- c. DSAs shall have a ventilation system independent of other ventilation systems servicing the rest of the building or conveyance
- d. DSAs shall prominently display a "Smoking Area" signage, graphic health warnings, and prohibition on the entry of persons below 18 years old
- e. There shall only be one DSA per building or conveyance

The order also stipulates that no designated smoking areas shall be installed in all centers of youth activity such as playschools, preparatory schools, elementary schools, high schools, colleges and universities, youth hostels and recreational facilities for minors; elevators and stairwells; fire-hazard locations such as gas stations and storage areas for flammable liquids, gas, explosives or combustible materials; hospitals, health centers, medical, dental and optical clinics, nursing homes, dispensaries and laboratories; and food preparation areas.

Conclusion

In the country of the Philippines has special rules for smoking who smoke in public places. The approved place is; Government buildings, schools, colleges and universities, offices and other workplaces, restaurants and other food and beverage companies, hotels and other accommodation facilities, hospitals, health centers, clinics and nursing homes, transportation terminals, churches, shopping centers, shops retail and other trading companies, entertainment companies, sports venues, other companies providing professional services. How can smoking even should be alone in a quiet place and can be done at home instead of in public places. This shows that the Government also gives people the right to freedom to smoke. Sanctions are given to offenders who smoke in public places up to ₱ 10,000 (US \$ 200) for violations of smoking bans in public places as specified in section 32 of the Tobacco Regulations Act. Enforcement can be carried out by members of the Philippine National Police and local task forces of each city and municipality.

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