

SUPPLEMENTARY MATERIAL 1

Summary of current national legislation relevant to tobacco regulation (up to October 2020)

Office of the President		
Law	Relevance to tobacco	Policy implication
Law No. 17/2007 on National Long-Term Development Planning	<ul style="list-style-type: none"> Article 3 stipulates that the national development goals must align with the 1945 Indonesian Constitution. Article 5 provides the President with authority to establish the national development goals during their term. Article 7 holds that the “government” supervises the implementation of this plan. 	<ul style="list-style-type: none"> The President has the authority and discretion to enact regulations related to the tobacco industry and tobacco control that contribute to the long-term national development plan, so long as they do not contradict existing laws. There is ambiguity in who would be supervises and implementing any regulations related to tobacco control as the law simply refers to this being the “government’s” responsibility. It does not further delineate which government institutions are charged with this responsibility.
Law No. 24/2011 on Social Security Administering Bodies	<ul style="list-style-type: none"> Article 41 outlines permissible sources of funding for the National Social Security Body and of the Universal Health Program 	<ul style="list-style-type: none"> The president has the authority to channel revenue raised from tobacco taxes towards social security programs.
Ministry of Agriculture		
Law	Relevance to tobacco	Policy implication
Law No. 12/1992 on Crop Cultivation Systems	<ul style="list-style-type: none"> Article 3 outlines that the improvement of agricultural production should contribute to “food security, clothing, housing, health, domestic industry and/or export industries.” Article 6(1) states that farmers have the freedom to cultivate whatever crops they choose in the manner they choose. However, under Article 6(2) they are also obliged to align with the Government’s national development plan for crop cultivation. Article 47 states that crop cultivation may only be undertaken by Indonesian citizens or companies that that registered in line with Indonesian regulations. 	<ul style="list-style-type: none"> There is an inherent contradiction in that while farmers are granted autonomy to grow whatever they wish on their land, they are also obligated to comply with the Government’s national development plan for cultivation. Any attempt to compel tobacco farmers to switch to other crops falls into a legal grey area. Only Indonesian citizens and Indonesian business entities (which includes cooperatives, state-owned enterprises and private companies) can invest in crop cultivation. This means that no foreign investment in tobacco crop cultivation is permitted.

Law No. 19/2013 on the Protection and Empowerment of Farmers	<ul style="list-style-type: none"> This bill enshrines the government's duty to protect farmers. Article 25(1) states: "The government is responsible for creating conditions that foster farming commodity prices that benefit farmers ." Further elucidated in Article 25(2), the laws provide authority to intervene by: <ul style="list-style-type: none"> (a) creating tariffs on the import of commodities (d) creating a market structure for farming products that is balanced (e) creating policies that stabilize crop prices 	<ul style="list-style-type: none"> Gives the government the authority to create protectionist policies that limit tobacco imports. Policies that have the potential to decrease sales or sale prices for tobacco farmers may be seen as a violation of this law as they present a "price uncertainty" and threaten farmers livelihoods. The government is obliged to provide support for transitioning to different crops if tobacco cultivation becomes unprofitable for farmers.
Ministry of Communication and Information		
Law	Relevance to tobacco	Policy implication
Law No. 40/1999 on the Press	<ul style="list-style-type: none"> Law governs what can and cannot be advertised throughout all forms of mass media Article 13(b) bans advertising of products such as "alcohol, narcotics, psychotropics, and other addictive substances, in accordance with other existing legislations." Article 13(b) and Article 13(c) include a ban on "the display or portrayal of cigarette use" in media. 	<ul style="list-style-type: none"> Advertising companies are responsible for upholding this law, outlining that "Advertising companies are forbidden to create advertisements" for these products. However, the law does not explicitly prohibit other non-advertising companies, or indeed individuals, from producing promotional content.
Law No. 32/2002 on Broadcasting	<ul style="list-style-type: none"> Article 43 on broadcast advertising, sub Article (3c) prohibits the promotion of cigarettes that display the consumption of cigarettes. 	<ul style="list-style-type: none"> Cigarette advertisements are permitted but cannot depict the act of smoking. Instead, cigarette advertisements often include conventionally "attractive" actors, innovative slogans, and slick designs that promote brand recognition without portraying a single cigarette.
Law No. 33/2009 on Film	<ul style="list-style-type: none"> Article 6(a): "Films are prohibited from encouraging public society to conduct violence, gambling and misuse narcotics, psychotropic and other addictive substance." 	<ul style="list-style-type: none"> This law had no impact on the portrayal of cigarette use in films until tobacco was designated an "addictive substance" by Law No. 36/2009 on Health Only portraying the <i>misuse</i> of an addictive substance is illegal. Since smoking is not illegal, the portrayal of smoking that does not constitute "misuse" remains legal.

Ministry of Finance		
Law	Relevance to tobacco	Policy implication
Law No. 39/2007 on Excise	<ul style="list-style-type: none"> Article 5(1) refers specifically to the legislative requirements for tobacco excise, which includes a 275% of the cost price if the adopted cost price is the factory-based selling price or 57% of the cost price if the adopted cost price is the retail price. The Ministry of Finance and the national parliament are the approving authority for any policies of changes that enforce 5(1), including: <ol style="list-style-type: none"> Excisable goods in the form of tobacco products shall be subject to excise on the basis of the highest rate: <ol style="list-style-type: none"> Produced in Indonesia <ol style="list-style-type: none"> 275% of the cost price if the adopted cost price is the factory-based selling price. 57% of the cost price if the adopted cost price is the retail price. Imported <ol style="list-style-type: none"> 275% of the cost price if the adopted cost price is the customs value plus import duty. 57% of the cost price if the adopted cost price is the retail price Article 5(4): Stipulation of the target of state revenue from excise in Draft State Budget of Revenue and Expenditure (RAPBN) and alternatives to policies of the Minister in optimizing efforts to achieve the target of the revenue by observing the condition of industries and aspirations of manufacturers shall be conveyed to the House of Representatives of the Republic of Indonesia (DPR RI) to obtain approval. Article 5(5) states that “further provisions on the rates of excise as described in paragraphs (1) and (2) as well as the change in the rate as described in paragraph (3) shall be ruled by a regulation of the Minister.” 	<ul style="list-style-type: none"> Under Article 5(4) plans for state revenue must be submitted to the National Legislatures for approval, offering an opportunity for tobacco lobbyists to influence parliamentarians and block proposed policies through this channel. The excise limitation (57% of retail price) makes it legislatively impossible to implement the WHO’s recommended minimum of 70% tax and excise on tobacco products. No guidelines exist on what the excise structure should look like, making the policy vulnerable to industry influence. Currently, there are several “classes” of cigarettes and excise depending on type of cigarette, means of production and whether it is a small-scale (local) or large-scale (national) producer, which can be manipulated by tobacco companies. Article 66 provides the legal basis for the Funds from the Profit Sharing of Tobacco Excise program (<i>Dana Bagi Cukai Hasil Cukai Tembakau</i>, DBCHCT), the proportion of tax that local governments are entitled to as part of the tax distribution arrangement between national and local government (district/town).

Law No. 28/2009 on Regional Taxation and Retribution [<i>retribusi</i>] to Regions	<ul style="list-style-type: none"> Guides the redistribution of cigarette excise to local areas. Article 2 (1): a portion shall be for the district/town in the relevant provincial territory (subject to provisions) Article 2(c): “70% of the proceeds of Cigarette Tax shall be submitted to the district/town [in which the taxes originated]. Article 31: “Of the revenue of Cigarette tax, whether given to the provincial or district/town, at least 50% shall be allocated to fund public Health/Medical Services and law enforcement by the authorized apparatus.” Article 94(1): “Out of the proceeds of provincial Taxes revenue as referred to in Section 2 paragraph (1), a portion shall be for the district/town in the relevant provincial territory (subject to provisions).” 	<ul style="list-style-type: none"> Similar to the DBHCHT, the local cigarette taxes represent a significant income for local governments, which may lead to reticence to regulate tobacco for fear of decreasing local government funding.
Ministry of Health		
Law	Relevance to tobacco	Policy implication
Law No. 36/2009 on Health	<ul style="list-style-type: none"> Potentially the most influential law related to tobacco, spawning a large number of Ministerial Regulations to restrict the use of tobacco products. Article 17 on ensuring the safe use of addictive substances, Article 113 states: (1) Ensuring the safe use of products that contain addictive substances should not disrupt and endanger the health of individuals, families, the community and the environment. 	<ul style="list-style-type: none"> Article 113 provides the legal basis for a number of tobacco control regulations and is the primary legislative mechanism used by the Ministry of Health, and other institutions, to justify tobacco control regulations (further outlined Table 3).
Ministry of Trade and Industry		
Law	Relevance to tobacco	Policy implication
Law No. 7/2014 on Trade	<ul style="list-style-type: none"> Article 35 (1) gives the government the authority to institute prohibitions or restrictions on trade of goods and/or services in the national interest. 	<ul style="list-style-type: none"> Gives authority to the Ministry of Trade to regulate trade that may jeopardize the “national interest .” This justification has been used in the past to regulate the import of tobacco, which some farmers have argued threatens their livelihood by creating unnecessary competition for their products.[1,2]

Law No. 3/2014 on Industry	<ul style="list-style-type: none"> Article 3 outlines the aims for the law which include: <ol style="list-style-type: none"> Build up national industries as a pillar and shaper of the national economy Enhance the depth and structure of industry Create industries that are independent, competitive and forward thinking, as well as Green Industries Under Article 32(1) “the government may ban or limit the export of natural resources.” 	<ul style="list-style-type: none"> The overall aims of the law could be applied liberally to protect the tobacco industry as a national industry that creates business opportunities and employment. Article 32(1) could be used to prevent the export of tobacco <i>if</i> the government ever deemed it necessary.
Law No. 25/2007 on Investment of Capital	<ul style="list-style-type: none"> Article 12(3) allows the government to determine which businesses are open and closed to foreign investment based on the following criteria: “soundness, morals, culture, the environment, national defense and security, as well as other national interests.” Article 12(5) gives the government the authority to create regulations that establish which business sectors are open to foreign investment, allowing for “national interest criteria, to wit protection of natural resources, protection and enhancement of micro, small and medium enterprises, and cooperatives, supervision of production and distribution, increase of technology capacity, domestic capital participation, as well as cooperation with business entities named by the Government.” 	<ul style="list-style-type: none"> Clauses exist within the law that allow the government to block foreign investment in defence of the “national interest .” Deriving authority from Article 12(5), Government Regulation (PP) No. 83/2001 guides the number of shares that foreign entities are allowed to in some sectors in Indonesia. Such a cap has not been placed on the tobacco industry, but to date no Indonesian tobacco company is 100% foreign owned. Basis for Presidential Regulation No. 44/2016 on the list of industries that are allowed to receive foreign investment. Foreign companies are able to invest in cigarette companies under this regulation, but restrictions could be issued by the President.
Ministry of Internal Affairs		
Law	Relevance to tobacco	Policy implication
Law No. 23/2014 on Local Government	<ul style="list-style-type: none"> Chapter 9, Article 236 of the law provides the authority to the regional parliament to create laws within the local area Regional regulations are created by the Regional People’s Representative Council (DPRD) with the agreement of the District Head. 	<ul style="list-style-type: none"> This law gives regional governments the right to create local regulations that apply within their administrative boundaries, which could be used to create regulations that restrict cigarette advertising, sales and consumption beyond what is required by current national laws and regulations.

Ministry of Education and Cultural Promotion		
Law	Relevance to tobacco	Policy implication
Law No. 5/2017 on the Cultural Promotion	<ul style="list-style-type: none"> Article 4 outlines the aims of the law in protecting and promoting Indonesia's cultural heritage, stating under (i) "the preservation of national cultural history" 	<ul style="list-style-type: none"> One of the main arguments put forward against tighter tobacco control laws is that they negatively impact the production of clove cigarettes (<i>kretek</i>), which some argue are a traditional Indonesian product and a crucial aspect of its cultural heritage. Any actions that could be perceived to endanger the "preservation" of the clove cigarettes industry could be mooted by this law.[3,4]

References

- [1] Ahsan A, Wiyono N, Veruswati M. *Kajian Impor Tembakau di Indonesia: Kondisi, Tantangan, dan Kebijakan*. Depok: University of Indonesia Publishing; 2019.
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- [3] Hanusz, Mark. *Kretek: the culture and heritage of Indonesia's clove cigarettes*. Singapore: Equinox Publishing; 2000.
- [4] Setyawan, A. *Kretek Sebagai Budaya Asli Indonesia: Telaah Paradigmatik Terhadap Pandangan Mark Hanusz Mengenai Kretek di Indonesia*. *MUHARRIK: Jurnal Dakwah dan Sosial*. 2018;1.01: 67-85.

SUPPLEMENTARY MATERIAL 2

Specific regulations on tobacco and policy implications (up to October 2020)

Law	Year	Regulation	Policy implication
President of Indonesia			
Law No. 3/2014 on Industry	2016	Presidential Decree No. 44/2016 on Lists of Businesses that are Closed and Business Fields that are Open with Conditions to Investment	<ul style="list-style-type: none"> Permits foreign investment in the cigarette production in Indonesia, with limitations including a requirement for special permission from the Indonesian Government.
—	2019	Presidential Decree No.75/2019 on the National Health Scheme (replacing previous Presidential Decree No.82/2018 on the National Health Scheme)	<ul style="list-style-type: none"> Increased the contribution of cigarette taxes towards the Indonesia's Universal Healthcare Scheme (Jaminan Kesehatan Nasional, JKN), 37.5% of local tobacco taxes to be redirected from local government coffers to towards funding the JKN.
Law No. 17/2007 on National Long-Term Development Planning	2020	National Medium-Term Development Plan (PP No. 18/2020)	<ul style="list-style-type: none"> Development Agenda 1 allows for the simplification of cigarette excise structures and an increase in tobacco excise. Development Agenda 3 specifies that tobacco excise increase must be gradual in order to mitigate negative impacts on tobacco farmers and tobacco industry workers.
Ministry of Agriculture			
Law No. 19/2013 on the Protection and Empowerment of Farmers	2019	Ministry of Agriculture Regulation No.23/2019 on Technical Recommendations for the Import of Tobacco	<ul style="list-style-type: none"> Aims to increase productivity of local tobacco farmers while also protecting them from negative consequences of tobacco importation. Tobacco importers must seek Ministry approval prior to buying tobacco from overseas. Tobacco importers must source at least two-thirds of their tobacco and cloves locally unless they can prove that local production is insufficient to meet demand for cigarette production.
Ministry of Finance, Directorate General of Customs and Excise			
Law No. 39/2007 on Excise	2016	Ministry of Finance Regulation No. 28/PMK.07/2016 on the use, oversight and evaluation of Funds from the Profit Sharing of Tobacco Excise (<i>Dana Bagi Hasil Cukai Hasil Tembakau, DBHCHT</i>)	<ul style="list-style-type: none"> Specifies that local areas will receive 2% of the excise collected on cigarettes sold locally. At least 50% of the DBHCHT funds to be spent on: raw materials, capacity building for industry or social services, socializing excise regulations or curbing illicit sales of products. The remaining funds may be spent on priorities as determined by the local government.
	2017	Ministry of Finance Regulation No.146/PMK.010/2017 on Excise Tariffs for Tobacco Products	<ul style="list-style-type: none"> Set factory production limitations for cigarettes, based on the type of cigarette being manufactured (e.g. hand-rolled cigarettes versus machine-made cigarettes).
	2017	Ministry of Finance Regulation No. 222/PMK.07/2017 on the use, oversight and evaluation of Funds from the Profit Sharing of Tobacco Excise	<ul style="list-style-type: none"> Amendment to Ministry of Finance Regulation No. 28/PMK.07/2016. Specifies that 50% of the overall amount received through the DBHCHT excise scheme is to be redirected to contribute towards the National Health Insurance Scheme. Remaining 50% may only be spent on raw materials, capacity building for industry or social

			services, socializing tobacco excise regulations or curbing illicit sales of tobacco products.
	2018	Ministry of Finance Regulation No. 156/PMK.010/2018 (amendment to Regulation No.146/PMK.010/2017 on excise tariffs for tobacco products)	<ul style="list-style-type: none"> Enacted a minimum cost per cigarette based on the type of cigarette (clove versus regular) and the mode of production (hand-rolled versus machine-made).
	2019	Ministry of Finance Regulation No. 152/PMK.010/2019 (second amendment to Regulation No. 46/PMK.010/2017 on excise tariffs for tobacco products)	<ul style="list-style-type: none"> Included minimum price per cigarette based on type of cigarette, mode of production, and where it was produced (local or imported).
Law No. 17/2007 on National Long-Term Development Planning	2020	Ministry of Finance Regulation No. 77/PMK.01/2020 on Minister of Finance Strategic Plan for 2020-2024	<ul style="list-style-type: none"> Builds on Presidential Decree No. 18/2020 to increase the national state revenue from tobacco excise from 172.2 trillion Rupiah to 180.5 trillion Rupiah. This paves the way for an additional tobacco excise increase in 2020.
Ministry of Health			
Law No. 36/2009 on Health	2013	Ministry of Health Regulation No. 28/2013 on the inclusion of health warning on tobacco product packaging	<ul style="list-style-type: none"> Specifies the guidelines for attaching textual and pictorial warnings to cigarette packaging.
	2016	Ministry of Health Regulation No. 40/2016 technical guide for the use of tobacco taxes for the delivery of health services to citizens	<ul style="list-style-type: none"> Stipulated that 37.5% of the local tobacco tax must be used to fund health/medical services and law enforcement of smoke-free areas. The remaining amount can be used at the discretion of local government.
	2016	Ministry of Health Regulation No. 50/2016 on guidelines for managing conflict of interests with the tobacco industry within the Ministry of Health	<ul style="list-style-type: none"> Guidelines for limiting conflicts of interest that arise from employees of the Ministry of Health interacting with representatives of the tobacco industry. This includes limiting: unnecessary interactions, partnerships with tobacco industry, accepting contributions or gratifications from the tobacco industry, and/or granting privileges to the tobacco industry. Every work unit leader is responsible for monitoring and evaluating potential conflicts of interest within their section. The Ministry of Health may sanction civil servants found to disregard the guidelines.
	2017	Ministry of Health Regulation No. 56/2017 amendment to the regulation on the inclusion of health warning on tobacco product packaging	<ul style="list-style-type: none"> Requires cigarette companies to update health warnings to the latest specifications set out by the ministry of Health within 12 months of the specifications being issued.
Ministry of Internal Affairs			

Law No. 36/2009 on Health	2017	Ministry of Internal Affairs Regulation No.33/2017 the guide for the use of local budgets and procurement in 2018	<ul style="list-style-type: none"> • Directs all local governments to follow the specifications for use of DBHCHT outlined in the Ministry of Health Regulation No.40/2016.
Cabinet			
Law No. 36/2009 on Health	2012	Government Regulation No.109/2012 on the use of tobacco products to control products that contain addictive substances	<p>Further articulates government responsibilities in relation to regulating tobacco products under the Law on Health including:</p> <ul style="list-style-type: none"> • Mandatory nicotine testing and quality control for cigarettes. • Machine-made cigarette must be sold in packages of 20 sticks or more. • Packaging to include pictorial and textual health warnings and the regulation includes the specifications for these warnings. • The nicotine and tar contents of the cigarettes must be printed the outside of the packaging. • Manufacturers prohibited from including language on packaging that indicate quality, superiority, safety, image, individuality, or words with similar meanings. • Ban of sale to children under 18, pregnant women and via vending machines. • Advertising may not target children or pregnant women • Restrictions on where and when cigarette advertisements may be placed in print and broadcast media. • No cigarettes may be given away for free or for promotional purposes. • Tobacco product logos may not be featured on non-tobacco products. • Local governments required to establish and police smoke-free areas. • Smoke-free areas include health care facilities, areas of teaching and learning, children's playgrounds, places of worship, public transport, and workplaces.
Ministry of Health and Ministry of Internal Affairs (joint regulation)			
Law No. 36/2009 on Health	2011	Joint Ministerial Regulation No.188/Menkes/PB/I/2011-No. 7/2011 on guidelines relating to the implementation of smoke-free areas	<ul style="list-style-type: none"> • Devolves responsibility for implementing smoke-free areas to provincial, city and local governments, under the supervision and direction of the Ministry of Health and Ministry of Internal Affairs.
Food and Drug Supervisory Agency			
Law No. 36/2009 on Health	2013	FDSA Regulation no.41/2013 on the supervision of tobacco products in distribution, the inclusion of health warnings in advertisements and tobacco product packaging, and promotion	<ul style="list-style-type: none"> • Outlines policy for testing tobacco products to determine nicotine and tar content • Obliges manufacturers to include information on tar and nicotine content on cigarette packaging, as well as a statement saying "Forbidden to be old or provided to children under the age of 18 and pregnant women." • Packaging must include the statements "there is no safe limit" and "there are more than 4000 dangerous chemicals as well as more than 43 cancer-causing substances" on all cigarette packages.

			<ul style="list-style-type: none"> Prohibits the inclusion of words that infer superior quality, a sense of safeness, or image-making such as “light”, “ultra”, “special”, “slim”. Gives the FDSA the authority to oversee and monitor compliance with advertising regulations and laws and issue sanctions against companies that are found to be in breach of this regulation.
Ministry of Education and Culture			
Law No. 36/2009 on Health	2015	Ministry of Education Regulation No.64/2015 on smoke-free areas in school environments [<i>includes sale and marketing bans</i>]	<ul style="list-style-type: none"> Smoking prohibited within school areas Schools prohibited from accepting sponsorship from cigarette companies or allowing programs or activities that constitute promotion Bans the installation of billboards, advertising, distribution of pamphlets and any other form of cigarette advertising in the “school environment” Prohibits sale of cigarettes in schools School principals and teachers prohibited from smoking, producing, selling and/or promoting cigarettes in schools School staff who breach the regulation subject to sanctions
Ministry of Trade and Industry			
Law No. 3/2014 on Industry	2014	Ministry of Industry Regulation No.64/M-IND/PER/7/2014 on the oversight and control of cigarette industry companies	<ul style="list-style-type: none"> Regulations regarding the rules that cigarette companies must meet in order to be granted a business permit Defines “small”, “mid-sized” and “large” companies, with different rules applying to each. Sets a minimum size of 200 square meters for cigarette factories (to discourage cottage industries).