

GENERAL CORPORATE / M&A

Health in Transition Part 3: Indonesia's New Tobacco and E-Cigarette Regulations



Indonesia has long grappled with public health concerns tied to tobacco and other addictive substances. This is especially challenging given its status as one of the world's largest tobacco markets. The challenge lies in striking a balance between the economic significance of the tobacco industry and the urgency of protecting public health. Over the years, the government has introduced laws and regulations to manage the production, sale, and consumption of tobacco products—and more recently, electronic cigarettes or e-cigarette.

Government Regulation No. 28 of 2024 as the Implementing Regulation of Law No. 17 of 2023 on Health (“**Regulation**”), marks a significant update to this regulatory landscape. It replaces Government Regulation No. 109 of 2012 on the Safeguard of Addictive Substances in Tobacco Products for Health (“**Previous Regulation**”). The Previous Regulation primarily focused on controlling the production, advertising, sale, and consumption of tobacco products. However, it did not specifically address emerging issues such as e-cigarettes or the need for stricter age checks in online sales.

In this client alert, we explore the key provisions of the Regulation, including new requirements for the sale and distribution of tobacco and e-cigarette products, online advertising restrictions, and compliance obligations for businesses.

Health Safeguards for Addictive Substances

The Regulation expands the types of products considered "addictive substances," going beyond traditional products like cigarettes and cigars. Now, newer products like e-cigarettes and heated tobacco are also included. This means that these products will be subject to the same – or in some cases, stricter – regulations as traditional tobacco products. Article 429(4) of the Regulation provides a detailed list of covered tobacco products, including cigarettes, cigars, leaf cigarettes, shredded tobacco, and other processed forms. E-cigarettes, whether liquid or solid, and heated tobacco products are also specifically regulated under this new framework.

New Standards and Requirements for Sales and Distribution

The Regulation introduces stricter controls on the production, distribution, and sale of tobacco and e-cigarette products. Here are some of the key changes:

- **Nicotine and tar limits:** Strict limits now apply to the amount of nicotine and tar allowed in these products. Producers and importers must test each product and submit the results to the BPOM (*Badan Pengawas Obat dan Makanan*), Indonesia's Food and Drug Administration Agency.
- **Testing technology standards:** To ensure accurate measurements, manufacturers must use approved testing technology. The Minister of Health can authorise alternative methods if a manufacturer lacks the necessary equipment.
- **Specific rules for e-cigarettes:** The Regulation introduces additional obligations for e-cigarette products. In addition to meeting the nicotine and tar requirements, producers and importers must register a detailed list of ingredients and additives with the BPOM.
- **Monitoring and verification processes:** All products must undergo rigorous testing before entering the market and additional verification are conducted during distribution. The Regulation requires these processes to take place in different laboratories, ensuring more reliable results.

Comparison of Packaging Standards between Regulation and Previous Regulation

The Regulation introduces detailed packaging standards for both tobacco and e-cigarette products, an area that was not fully addressed in the Previous Regulation. Here is a summary of the key changes:

Provision	Regulation	Previous Regulation
Machine-made white cigarettes	Must be packaged with a minimum of 20 cigarettes per pack.	Same provision applies.
Shredded tobacco products	Must not exceed 50 grams per pack.	Not regulated.
Closed-system e-cigarettes	Liquid nicotine must not exceed 2 ml per cartridge, and each pack must not contain more than 2 cartridges.	Not regulated.
Open-system e-cigarettes	Liquid nicotine must only be packaged in 10-ml or 20-ml containers.	Not regulated.
Solid e-cigarettes	Must be packaged with 20 units per pack.	Not regulated.

Prohibitions on Selling Tobacco and Electronic Cigarette Products

The Regulation tightens the rules on how tobacco and e-cigarette products can be sold. Here are the key restrictions:

- **No self-service machines:** This rule, already in place under the Previous Regulation, remains in effect.
- **Age restrictions:** The minimum age for purchasing these products has been raised from 18 to 21. As before, sales to pregnant women are prohibited.
- **Ban on single-stick sales:** Selling individual cigarettes is now banned, with exceptions for cigars and e-cigarettes. This was not explicitly addressed in the Previous Regulation.
- **Product placement:** Products cannot be displayed near entrances, exits, or high-traffic areas within stores, reducing visibility and impulse purchases. This restriction was not explicitly addressed in the Previous Regulation.
- **Distance from schools and playgrounds:** While the Previous Regulation already prohibited sales within educational units and children's play areas, the Regulation specifies a 200-meter radius, providing greater clarity and enabling stricter enforcement.
- **Online sales:** Online retailers must verify the age of buyers, and the minimum age has been raised to 21.

Online Advertising Regulations for Tobacco and Electronic Cigarettes

The Regulation also cracks down on online advertising for tobacco and e-cigarette products. Article 446 of the Regulation prohibits advertising these products on social media and other digital platforms to prevent it from reaching the wider public, especially minors. Moreover, Article 447 of the Regulation provides a comprehensive guideline for online advertising, namely that:

- **Social media ban:** Advertising these products on social media platforms is now prohibited.
- **Website and app restrictions:** Websites and apps can still host ads, but they must follow strict guidelines:
 - Include clear health warnings about the risks of these products.
 - Clearly state the age restriction (21 years or older) and the ban on sales to pregnant women.
 - Avoid any language or imagery that suggests these products are safe or have health benefits.
 - Refrain from using cartoons or anything that might appeal to young people.
 - Implement age-verification systems to prevent minors from accessing these ads.

The Minister of Communication and Digital in the present cabinet (previously known as the Minister of Communication and Informatics at the time of the Regulation's enactment) is responsible for enforcing these rules and can block websites or ads that do not comply, based on recommendations from the Ministry of Health.

Conclusion

The Regulation represents a significant step in Indonesia's ongoing efforts to regulate the tobacco industry and protect public health. It addresses key areas such as e-cigarettes and online sales, which were not fully covered by previous regulations. This stricter approach reflects the government's commitment to adapting to the evolving landscape of tobacco and nicotine products.

Companies involved in the production, distribution, or sale of tobacco and e-cigarette products must carefully review the new requirements and ensure their operations are compliant. This may include updating product labelling and packaging, implementing age verification systems, reviewing advertising and marketing materials, and ensuring compliance with nicotine and tar limits.

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