

New Legal Landscape for the Tobacco and E-Cigarette Business in Indonesia

Prepared by:

Nashatra Prita (Partner) and Yasyfa Alifya Radiany (Associate)

With the recent enactment of Law No. 17 of 2023 concerning Health and Government Regulation No. 28 of 2024 concerning Implementing Regulation of Law Number 17 of 2023 on Health (“**GR 28/2024**”), Dentons HPRP will be releasing a comprehensive series of articles to provide key legal insights and updates on the evolving regulatory landscape of the healthcare sector. This series will highlight various provisions within the law and their potential impacts on stakeholder and aim to provide a clearer understanding of the impact and implications of the latest regulations in the healthcare sector.

In this first article of the series, we will delve into the regulations concerning tobacco and e-cigarette policies, presenting several provisions and their implications for the industry.

The government has introduced a comprehensive new provision governing the production, distribution, and marketing of tobacco products and e-cigarettes in GR 28/2024. The tobacco and e-cigarettes industry has been a well-established and profitable industry for a long time due to its vast and growing market in Indonesia. With robust consumer demand and a large, youthful population, Indonesia offers a promising opportunity for investors seeking to enter or expand this industry within the region.

The commercial appeal of tobacco products and e-cigarettes is increasingly viewed as desirable as these items are particularly sought among young consumers. Furthermore, the wide variety of flavors and sleek designs available for these products significantly enhance their attractiveness, contributing to their growing popularity among the youth.

However, the commercial success of these products can also have negative consequences for the community. Due to the lack of clear and consistently enforced regulations on smoke-free areas, many individuals are exposed to secondhand smoke, turning them into passive

smokers. This regulatory ambiguity not only poses significant risks to public health but also hampers efforts to establish safe, smoke-free environments for non-smokers, ultimately undermining public health initiatives.

However, the commercial success of these products can also have negative consequences for the community. Due to the lack of clear and consistently enforced regulations on smoke-free areas, many individuals are exposed to secondhand smoke, turning them into passive smokers. This regulatory ambiguity not only poses significant risks to public health but also hampers efforts to establish safe, smoke-free environments for non-smokers, ultimately undermining public health initiatives.

Therefore, there is a pressing demand for more comprehensive legal enforcement regarding the utilization of tobacco and e-cigarettes in Indonesia to safeguard public health and reduce the prevalence of smoking among vulnerable populations.

Regarding the production of tobacco products and e-cigarettes, GR 28/2024 has several key implications for the production process.

New Packaging Policies

GR 28/2024 specifies the packaging requirements for addictive substances on a per-package basis, as follows:¹

Products	Requirements
White Machine Cigarettes	not less than 20 cigarettes per pack.
Shredded Tobacco	not more than 50 grams in each pack
Closed-System Electronic Cigarettes or Disposable Cartridge	not more than (i) 2 milliliters of nicotine liquid per cartridge and (ii) 2 cartridges of nicotine liquid per pack
Open-System Electronic Cigarettes	10 and 20 milliliters of nicotine liquid per pack
Solid Electronic Cigarettes	packaged or imported in packages of 20 cigarettes per pack

Besides that, GR 28/2024 also mandates the obligation to include a health warning on the packaging.² Business actors are required to adhere to specific packaging standards that include clear health warnings and detailed product information. Compliance with this is essential to ensure that consumers are well-informed about the potential risks associated with the products they are using.

At the distribution level, GR 28/2024 also requires business actors to obtain a valid business license and adhere to strict regulations regarding nicotine and tar content.³ This includes ensuring that their products comply with established maximum limits for both substances. Additionally, businesses are required to conduct thorough testing of their products and report the results of nicotine and tar content to the appropriate non-ministerial government agency.

As the products are introduced to the market, business actors must also consider the marketing requirements for their products. Several new prohibitions are expected to bring significant changes to the marketing of tobacco products and e-cigarettes. The sale of tobacco products is prohibited for everyone under the following conditions:⁴

- a. using vending machines;
- b. selling to individuals under the age of 21 and to pregnant women;

- c. selling in single units, except for tobacco products such as cigars and electronic cigarettes;
- d. placing tobacco products and electronic cigarettes near entrances and exits or in high-traffic areas;
- e. within a radius of 200 meters from educational institutions and playgrounds; and
- f. using commercial websites, electronic applications, or social media platforms.

As mentioned earlier, the spirit behind the enactment of this regulation is not only to address the significant risks posed to public health but also to support efforts in creating safe, smoke-free environments for non-smokers. To that end, GR 28/2024 includes provisions for the standardization of smoking areas. Under this regulation, a designated smoking area is defined as an open space that is separate from the main building, away from foot traffic, and distant from entrances and exits. Workplaces, public spaces, and other locations are required to provide such areas, with further guidelines to be established through Regional Regulations in each region.⁵

The implementation of designated smoking areas as mandated by GR 28/2024 will have a notable impact on stakeholders, particularly businesses such as restaurants, cafes, and entertainment venues. These establishments will need to allocate specific areas for smoking that meet the regulation's requirements, which may involve restructuring their premises or investing in new outdoor spaces. For many businesses, this could lead to increased operational costs and potential adjustments to their layout or customer flow. However, it also presents an opportunity for businesses to enhance the comfort and safety of their non-smoking patrons, potentially improving the overall customer experience.

The adjustments to the provisions concerning the production, importation, and distribution of tobacco products and electronic cigarettes will officially take effect two years after the enactment of this Government Regulation. Manufacturers, importers, and distributors will need to assess their current practices and make necessary modifications to ensure compliance with the updated regulations.

¹Article 433 of GR 28/2024.

²Articles 437 – 439 of GR 28/2024.

³Article 431 of GR 28/2024.

⁴Article 434 paragraph (1) of GR 28/2024.

⁵Articles 442 – 443 of GR 28/2024.

Business actors must ensure compliance with GR 28/2024 for their tobacco products and e-cigarettes to avoid potential sanctions. Failure to adhere to the regulation may result in a range of penalties, such as written warnings, administrative fines, and product recalls which can be detrimental to business sustainability.

In conclusion, the enactment of GR 28/2024 will significantly impact local manufacturers and importers of tobacco products and e-cigarettes. Manufacturers and importers wishing to produce and distribute these products must ensure that their operations fully comply with the standards set forth in the regulation. Indonesia's tobacco and vape

industry continues to experience strong growth, offering attractive opportunities for investors and business players alike. However, the introduction of GR 28/2024 presents compliance challenges that business actors must address to ensure regulatory adherence. For investors, navigating these new regulations and ensuring full compliance are essential to mitigating risks and securing long-term success. By doing so, businesses can operate smoothly within the evolving legal framework and contribute to the sustainable growth of this thriving sector.

- o0o -

The article above was prepared by Dentons HPRP's lawyers

This publication is not intended to be a comprehensive review of all developments in the law and practice, or to cover all aspects of those referred to. Readers should take legal advice before applying the information contained in this publication to specific issues or transactions or matters. For more information, please contact us at dentons.hrp@dentons.com.

No part of this publication may be reproduced by any process whatsoever without prior written permission from Hanafiah Ponggawa & Partners.