

Understanding the Differences in Tobacco Circulation Laws: A Comparative Study Between France and Indonesia

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Abstract

This research aims to conduct a comparative analysis of the legal regulations governing the circulation of cigarettes between France and Indonesia. By examining the existing legal frameworks in both countries, this study highlights the differences and similarities in the legal approaches towards the tobacco industry, including regulations on advertising, sales,

and taxation of cigarettes. Through careful data collection and analysis, this article offers an in-depth understanding of how the laws and policies of each country influence the circulation of cigarettes and their impact on public health. The implications of these legal differences are also considered to enhance the understanding of international regulations related to tobacco control. The research results show that regulating the circulation of cigarettes is an important issue for many countries in their efforts to protect public health. Although France and Indonesia share the same goal, the regulatory approaches adopted by these two countries differ. France implements very strict regulations, such as bans on cigarette advertising, promotion, and sponsorship, restrictions on the sale of cigarettes to people under 18 years of age, as well as high excise and tax policies. On the other hand, Indonesia takes a more moderate approach by considering the economic aspects of the tobacco industry. However, both countries still face challenges in implementing and enforcing these regulations. Cross-country cooperation and participation in international forums, such as the Framework Convention on Tobacco Control (FCTC), can be a solution to strengthen global efforts to protect public health.

Keywords

Comparative Legal Study; Cigarette Circulation; Policies; Regulations.

I. Introduction

Indonesia, as the sixth largest producer of tobacco annually with an output of 136,000 tons or around 1.91% of the world's total tobacco production, has made cigarettes a major contributor to the country's revenue through excise duties, taxes, and land and building taxes. However, the substantial profits generated have a negative impact on public health, particularly with the easy accessibility of cigarettes in Indonesia across all demographics regardless of the minimum legal age.¹

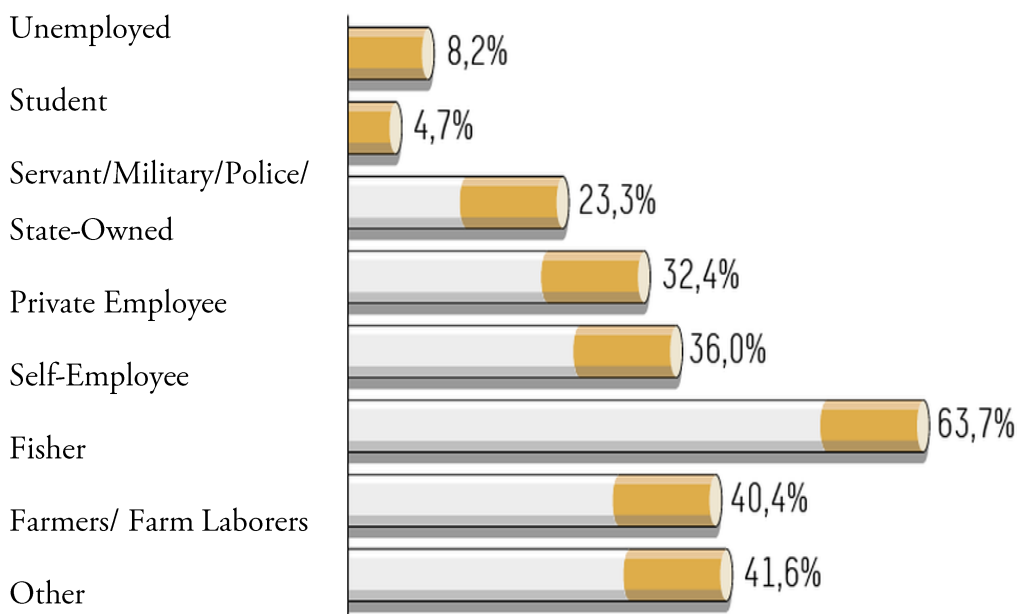
This situation will influence an unhealthy lifestyle among the public, as evidenced by the numerous criticisms directed towards the cigarette distribution industry. The Ministry of Health has emphasized that there is a significant loss in public health conditions, with a threefold increase in the incidence of smoking-related diseases in 2023, including cancer, Chronic Obstructive Pulmonary Disease (COPD), heart disease, and others. This analysis suggests that there is an imbalance between cigarette distribution and the need to prevent its negative impacts on society.²

The tobacco industry has been a subject of lengthy and complex debate around the world. The circulation of cigarettes, as the primary product of this industry, not only directly affects public health but also plays a crucial role in the global economy. Amidst fierce market competition and increasing regulatory demands, countries worldwide have adopted different approaches to regulating cigarette distribution. Two countries that are interesting to compare are France and Indonesia, each representing distinct legal and cultural contexts.³

¹ Pahrudin Hm and Universitas Nurdin Hamzah, *Masyarakat Konsep Dan Praktik*, 2023.

² Zulham Andi Ritnga, "Modul Cetak Bahan Ajar Epidemiologi," 2020, 139–48.

³ Dr. Rendi Prayuda dan Syafri Harto, "ASEAN Dan Kejahatan Transnasional Narkotika," 2020, 1–179, [https://repository.uir.ac.id/20487/1/ASEAN dan Kejahatan Transnasional Narkotika.pdf](https://repository.uir.ac.id/20487/1/ASEAN%20dan%20Kejahatan%20Transnasional%20Narkotika.pdf).

Table 1. Smoking Proportion in the Population Aged ≥ 10 Years by Occupation

Source: (Ministry of Health, 2018)

France, as a country with a long history in the tobacco industry, has developed a strict legal framework to regulate the circulation of cigarettes. With a health-conscious population, France has implemented various regulations aimed at reducing cigarette consumption and its negative impacts on society. On the other hand, Indonesia, as one of the world's largest cigarette producers, faces its own challenges in regulating cigarette circulation. Although efforts have been made to control cigarette consumption, the existing regulations still have weaknesses and shortcomings in enforcement.⁴

In this context, a comparative study of the legal rules governing cigarette circulation between France and Indonesia becomes relevant and beneficial. By comparing the legal approaches of the two countries, we can identify differences and similarities in the regulations on advertising, sales, and taxation of cigarettes. Additionally, this research

⁴ Carl Augustinus et al., "Cigarette Excise: Between State Revenue And Global Demands Cukai Rokok: Antara Penerimaan Negara Dan Tuntutan Global" 10, no. 1 (2024): 31–38.

will also explore the impact of these legal differences on public health and tobacco control policies.⁵

Specifically, this research will investigate the laws and regulations governing cigarette circulation in both countries and examine how the implementation and enforcement of these rules are carried out in practice. Thus, this research not only provides a better understanding of the legal frameworks influencing the tobacco industry in France and Indonesia but also offers broader insights into the complexities of regulating cigarette circulation at the international level.

Through a careful and in-depth analysis of the differences and similarities in the legal approaches between France and Indonesia, this research is expected to make a valuable contribution to our understanding of the challenges and opportunities in regulating cigarette circulation in this era of globalization. Therefore, let us begin by further exploring the legal rules governing cigarette circulation in these two countries and the implications of these legal differences for public health and tobacco control policies.

Cultural differences, historical backgrounds, and socio-economic conditions between France and Indonesia influence how the two countries regulate cigarette circulation. France, as one of the countries with a high level of health awareness in Europe, has taken significant steps to reduce cigarette consumption and protect public health. In contrast, Indonesia, with a diverse population and significant economic interests in the tobacco industry, faces greater challenges in tightening regulations on cigarette circulation.⁶

Within this framework, this research aims to further explore the complexities. By considering the complex legal frameworks and socio-economic dynamics of each country, this study seeks to provide a deeper understanding of how the regulation of cigarette circulation is regulated

⁵ Zidny Ima Hasan and Muhammad Izma Imansyah, "Dilema Indonesia Antara Industri Rokok Dalam Negeri Dan Kerangka Kerja World Health Organization – Framework Convention on Tobacco Control," *Bussman Journal: Indonesian Journal of Business and Management* 3, no. 2 (2023): 713–37, <http://bussman.gapenas-publisher.org/index.php/home/article/view/167>.

⁶ Riyadi Santoso, "Dilema Kebijakan Pengendalian Tembakau Di Indonesia," *Kajian* 21, no. 3 (2016): 201–19, <http://www.beacukai.go.id/statistik.html>,.

in France and Indonesia, as well as its impact on public health and tobacco control policies.

Additionally, this research will also provide a broader perspective on international comparisons in the regulation of cigarette circulation. By examining case studies from these two countries, we can draw more general conclusions about the factors influencing the effectiveness of cigarette circulation regulations and the challenges in implementing them globally.

From the above background, the author has derived two research problems to be studied and developed:

1. What are the differences in the regulation of cigarette or tobacco circulation between France and Indonesia?
2. What roles do the government and society play in implementing cigarette circulation regulations within society to minimize potential negative impacts?

Based on these research problems, this article aims to address the following:

1. Identify and analyze the differences in the regulation of cigarette or tobacco circulation between France and Indonesia.
2. Analyze the roles played by the French and Indonesian governments in implementing cigarette circulation regulations within society to minimize potential negative impacts.

II. Method

This research employs a qualitative research approach. The qualitative research approach is a type of research that aims to interpret the subjects and objects within the author's research.⁷ The type of research used in this thesis is normative juridical research. Normative legal research is a mechanism carried out to discover legal regulations, legal principles, or

⁷ Arpin Arpin and Haritsa Haritsa, "Penyelesaian Tindak Pidana Melalui Mediasi Penal Oleh Masyarakat Desa Di Kabupaten Gorontalo," *Jurisprudentie: Jurusan Ilmu Hukum Fakultas Syariah Dan Hukum* 5, no. 2 (2018): 44, <https://doi.org/10.24252/jurisprudentie.v5i2.6281>.

the use of legal experts to address existing legal problems.⁸ This research is conducted using a literature research mechanism and secondary data, which is known as normative legal research or library legal research.⁹ In this research, the author uses an interactive analysis model for data analysis. In this model, data reduction and data presentation components are carried out simultaneously with the data collection process. After the data is successfully collected, the three analysis components (data reduction, data presentation, and conclusion drawing) interact with each other.¹⁰

The reason the author compares Indonesia and France is because it aligns with the normative juridical research method used. By examining literature and secondary data, the comparative study between the two countries allows the researcher to analyze in-depth the differences in regulations and legal arrangements related to the circulation of cigarettes or tobacco. This will help answer the research questions regarding the differences in regulations between the two countries, as well as the roles of the government and society in implementing these regulations. The normative juridical research approach, by comparing regulations between two different countries, can provide broader insights and enrich the analysis regarding the diversity in legal arrangements for the circulation of cigarettes.

⁸ Andri Kristanto, “Kajian Peraturan Jaksa Agung Nomor 15 Tahun 2020 Tentang Penghentian Penuntutan Berdasarkan Keadilan Restoratif,” *Jurnal Lex Renaissance* 7, no. 1 (2022): 180–93, <https://doi.org/10.20885/jlr.vol7.iss1.art14>.

⁹ Amiruddin Pabbu and Randi Qadri, “Tinjauan Hukum Terhadap Tindak Perampasan Mobil Oleh Debt Collector (Studi Putusan No . 141 / Pid . B / 2019 / PN . Pky) Artikel Info Keywords : Indonesia Merupakan Negara,” no. 141 (2019): 183–92.

¹⁰ Ahlan Syaeful Millah et al., “Analisis Data Dalam Penelitian Tindakan Kelas,” *Jurnal Kreativitas Mahasiswa* 1, no. 2 (2023): 140–53.

III. Differences in the regulation of cigarette or tobacco circulation between France and Indonesia

Regarding cigarette advertising regulations, France prohibits the promotion of cigarettes in public places based on Article L3511-3 of the Public Health Law, while Indonesia bans all forms of cigarette advertising in mass media based on Article 114 of Law No. 36 of 2009 concerning Health. Nevertheless, the practice of inserting cigarette advertisements under sponsorship or certain events remains a challenge in enforcing the regulations. In terms of cigarette sales, France restricts the sale of cigarettes to those over 18 years of age through Article L3513-1, while Indonesia prohibits the sale of cigarettes to children under a certain age based on Article 55 of the Health Law.¹¹

However, the sale of cigarettes at kiosks or shops that do not comply with these regulations still occurs frequently in Indonesia. Regarding cigarette taxation regulations, France gradually increases cigarette tax rates based on tax laws, while Indonesia regulates cigarette tax rates through Article 22 of the Taxation Law. However, efforts to increase cigarette tax rates to reduce consumption still face resistance from the tobacco industry and some segments of society. Thus, the differences in the legal approach between France and Indonesia in regulating cigarette circulation are primarily seen in the strictness of regulations on advertising, sales, and taxation of cigarettes.

Although both countries have similar regulations in terms of protecting public health, the implementation and enforcement of these regulations still face significant challenges in practice. In France, cigarette advertising regulations are based on the Public Health Law,

¹¹ T. Muhammad Al Arief, "Perlindungan Konsumen Terhadap Penjualan Rokok Kepada Anak Di Bawah Umur Di Kota Banda Aceh," *JOM Fakultas Hukum* 2, no. 19 (2018): 57–70.

which prohibits cigarette advertising in public places, while in Indonesia, cigarette advertising regulations are also very strict, prohibiting advertising in mass media and public places. Despite these regulations, the practice of inserting cigarette advertisements under sponsorship or certain events remains a challenge in law enforcement in both countries.¹²

Regarding cigarette sales, France and Indonesia have regulations aimed at protecting the younger generation from exposure to cigarettes. However, the implementation of these regulations still faces challenges, particularly in the sale of cigarettes at kiosks or shops that do not comply with age restrictions. Furthermore, in terms of cigarette taxation regulations, France and Indonesia regulate cigarette tax rates through their respective tax laws. Although France gradually increases cigarette tax rates to reduce consumption, in Indonesia, efforts to increase cigarette tax rates still face resistance from the tobacco industry and some segments of society.¹³

Thus, the differences in the legal approach between France and Indonesia in regulating cigarette circulation are primarily seen in the strictness of regulations on advertising, sales, and taxation of cigarettes. Although both countries have similar regulations in terms of protecting public health, the implementation and enforcement of these regulations still face significant challenges in practice.

In efforts to strengthen law enforcement and address challenges in implementing cigarette regulations, both countries can learn from each other's experiences. For example, France can provide insights into effective strategies for addressing illegal cigarette advertising or the sale

¹² Sudartomo Macaryus et al., "Cigarette Advertisements: More Than Just Re-Constructing and Re-Creating Words," *International Conference on Technology, Education and Science (InCoTES) 2020*, 2020, 78–86, <http://jurnal.ustjogja.ac.id/index.php/incotes/index%0ACigarette>.

¹³ Winny Dian Safitri and Rizanna Rosemary, "Analysis Effect Of Income On People's Cigarette Consumption Levels," *Jurnal Ilmu Administrasi Media* 19, no. January (2022): 168–75.

of cigarettes to underage individuals who are vulnerable. On the other hand, Indonesia can share experiences on how to deal with resistance from the tobacco industry and society in increasing cigarette tax rates.¹⁴

Additionally, cooperation between these countries can also be extended to the international arena. By participating in international forums, such as the Framework Convention on Tobacco Control (FCTC), France and Indonesia can jointly advocate for stricter regulations related to the circulation of cigarettes at the global level. This includes the enforcement of rules on advertising, sales, and taxation of cigarettes, as well as efforts to strengthen public awareness about the dangers of smoking on health.

Thus, through cross-country cooperation and involvement in international forums, France and Indonesia can work together to address challenges related to the circulation of cigarettes and strengthen global efforts to protect public health. With this, we can hope to see improvements in law enforcement and more effective implementation of regulations, as well as a significant reduction in cigarette consumption in the future.¹⁵

In the framework of cigarette regulation, France and Indonesia have different legal approaches. In France, cigarette advertising is strictly regulated by Article L.3511-3 of the Public Health Law, which prohibits cigarette advertising in public places. In contrast, Indonesia bans all forms of cigarette advertising in mass media based on Article 114 of Law No. 36 of 2009 concerning Health.

Despite the regulations in place, challenges in enforcing the rules remain, particularly in dealing with the practice of inserting cigarette

¹⁴ Karin A. Kasza et al., "The Effectiveness of Tobacco Marketing Regulations on Reducing Smokers' Exposure to Advertising and Promotion: Findings from the International Tobacco Control (ITC) Four Country Survey," *International Journal of Environmental Research and Public Health* 8, no. 2 (2011): 321–40, <https://doi.org/10.3390/ijerph8020321>.

¹⁵ Regional Office and F O R Central, "REPORT REGIONAL OFFICE FOR CENTRAL ASIA ANNUAL," 2022.

advertisements under sponsorship or certain events. In terms of cigarette sales, France restricts the sale of cigarettes to those over 18 years of age through Article L.3513-1 of the Public Health Law, while Indonesia prohibits the sale of cigarettes to children under a certain age based on Article 55 of the Health Law. However, efforts to enforce these regulations still face obstacles, especially in the sale of cigarettes at kiosks or shops that do not comply with age restrictions for sales.¹⁶

In the area of taxation, France sets cigarette tax rates based on tax laws that regulate cigarette tax rates according to the type of product and its nicotine content, while Indonesia regulates cigarette tax rates through Article 22 of the Taxation Law. Nevertheless, resistance from the tobacco industry and some segments of society remains an obstacle in efforts to increase cigarette tax rates to reduce consumption. Thus, the differences in the legal approaches between these two countries demonstrate the complexity of cigarette regulation at the international level, where despite similar regulations being implemented to protect public health, the implementation and enforcement of these rules still face significant challenges.

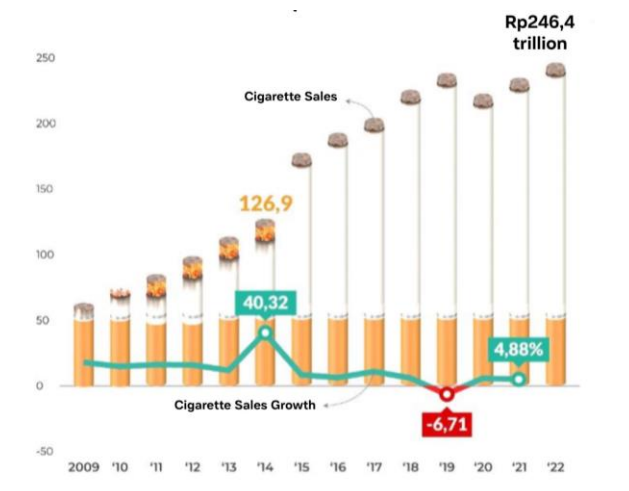
In efforts to strengthen law enforcement and address challenges in implementing cigarette regulations, both countries can learn from each other's experiences. For example, France can provide insights into effective strategies for addressing illegal cigarette advertising or the sale of cigarettes to underage individuals who are vulnerable. On the other hand, Indonesia can share experiences on how to deal with resistance from the tobacco industry and society in increasing cigarette tax rates.¹⁷

¹⁶ Eti Wiyati Nurcahyani et al., "The Impact of Cigarette Advertisements on Adolescents: A Literature Review," *Jurnal Ilmu Kesehatan Masyarakat* 10, no. 2 (2019): 74–82, <https://doi.org/10.26553/jikm.2019.10.2.74-82>.

¹⁷ Rose Mc Keon Olson, Claudia García-Moreno, and Manuela Colombini, "The Implementation and Effectiveness of the One Stop Centre Model for Intimate Partner and Sexual Violence in Low-and Middle-Income Countries: A Systematic Review of Barriers and Enablers," *BMJ Global Health* 5, no. 3 (2020): 1–34, <https://doi.org/10.1136/bmjgh-2019-001883>.

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Table 2. Cigarette Sales and Growth, 2009-2022



Source: (Ministry of Health, 2018)

In continuing cross-country cooperation and participation in international forums, it is important for France and Indonesia to

¹⁸ Dodik Setiawan Nur Heriyanto, "Recent Development on Tobacco Control Policy in Indonesia: Analyzing Obstacles Faced By Indonesia in the Ratification of Framework Convention on Tobacco Control," *Jurnal Hukum Ius Quia Iustum* 21, no. 2 (2014): 157–74, <https://doi.org/10.20885/iustum.vol21.iss2.art1>.

continue developing holistic and sustainable strategies in addressing challenges related to cigarette circulation. This includes strengthening coordination among government agencies, increasing law enforcement capacity, and actively involving civil society and public health organizations in the decision-making process.

1. Legal and Constitutional Framework

a. France

Tobacco regulation in France is based on the constitutional principle of public health protection. The Conseil Constitutionnel, the highest court in France, has repeatedly affirmed the constitutionality of anti-tobacco laws. In Decision No. 2015-727 DC, the Council declared that plain packaging of cigarettes does not violate intellectual property rights or freedom of business, prioritizing public health over commercial interests. This decision reflects a progressive interpretation of Article 11 of the Preamble to the French Constitution of 1946, which guarantees the right to health protection. The Conseil Constitutionnel has consistently interpreted this article as a constitutional mandate to protect public health, providing a strong basis for strict anti-tobacco legislation.¹⁹

b. Indonesia

In contrast to France, the Constitutional Court of Indonesia has demonstrated a more balanced approach. In Decision No. 57/PUU-IX/2011, the Court annulled several provisions of the Health Law related to pictorial warnings on cigarette packaging, stating that these provisions lacked sufficient legal basis. This decision reflects the complex balance between the constitutional rights of the tobacco industry and the state's mandate to protect public health. The Constitutional Court interprets Article 28H paragraph (1) of the 1945 Constitution, which guarantees the

¹⁹ By Joseph Rieras, "The WTO's Decision on Australia's Plain Packaging Tobacco Measures Explained FROM A GLOBAL PERSPECTIVE," 2020, 6–11.

right to a good and healthy environment, in a more limited manner compared to the interpretation by the Conseil Constitutionnel of France regarding similar constitutional provisions.²⁰

2. Enforcement Mechanisms and Judicial Interpretation

a. France

The enforcement of anti-tobacco laws in France involves various agencies, including the Directorate General for Competition, Consumer Affairs, and Fraud Control (DGCCRF) for market surveillance and local health authorities for compliance in public spaces. According to the DGCCRF's 2020 report, the agency conducted over 4,000 inspections related to tobacco products, with a violation rate of around 15%. French courts have consistently interpreted the laws strictly. In a significant case (Conseil d'État, 23/07/2012, 337538), the Conseil d'État upheld a strict ban on advertising, rejecting tobacco industry arguments based on freedom of expression. This decision set an important precedent prioritizing public health over commercial interests in the context of tobacco regulation. Furthermore, in the case of *Philip Morris France and Others v. Premier ministre and Others* (C-547/14), the Court of Justice of the European Union upheld the validity of Directive 2014/40/EU, which regulates tobacco products at the EU level. This decision reinforced France's position in implementing stringent tobacco regulations.²¹

b. Indonesia

Enforcement in Indonesia is more fragmented, with responsibilities divided among various agencies such as the Food and Drug Supervisory Agency (BPOM), local governments, and

²⁰ Tarif Cukai, *Rokok Maksimal, and Pada Pembahasan*, "Universitas Indonesia Peran Kekuatan-Kekuatan Politik," no. 39 (2018).

²¹ Rieras, "The WTO 's Decision on Australia 's Plain Packaging Tobacco Measures Explained FROM A GLOBAL PERSPECTIVE."

the Ministry of Finance. According to the Ministry of Health's 2020 report, only about 50% of districts/cities in Indonesia have fully implemented No-Smoking Areas (KTR) regulations. Judicial interpretations tend to be more accommodating to the industry. In a 2016 case (No. 66 P/HUM/2018), the Supreme Court annulled a regulation requiring larger health warnings on cigarette packaging, highlighting a more lenient approach to tobacco regulation. However, there have also been decisions supporting tobacco regulation. For example, in Decision No. 34/G/2018/PTUN-JKT, the Jakarta Administrative Court rejected a lawsuit by the tobacco industry against regulations on tobacco product packaging and labeling.²²

3. Socio-Political Context

a. France

France's strict approach is influenced by several factors:²³

- 1) Strong anti-tobacco movement: Organizations like the Comité National Contre le Tabagisme (CNCT) have played a significant role in shaping public opinion and influencing policy.
- 2) Integration with European Union health policies: As an EU member, France is bound by Directive 2014/40/EU, which sets high standards for tobacco regulation.
- 3) High economic burden of smoking-related diseases: According to a study published in the *Bulletin Épidémiologique Hebdomadaire*, the social cost of tobacco in France is estimated at 120 billion euros per year.

However, France also faces challenges from:

²² John Madeley, "Big Business Poor Peoples - Bisnis Besar Menguasai Masyarakat Miskin," 2002, 368, <http://library1.nida.ac.th/termpaper6/sd/2554/19755.pdf>.

²³ Nadirah S Sos, *ANALISA KRITIS TERHADAP KEBIJAKAN INDONESIA*, 2020.

- 1) Cross-border illegal cigarette trade: According to a report from KPMG, the illegal cigarette trade in France accounted for 14.1% of total consumption in 2020.
- 2) Resistance from some tobacco farmers' groups: Although their numbers are decreasing, there are still around 1,000 tobacco farmers in France who oppose stricter regulations.

b. Indonesia

Indonesia's approach is influenced by several factors:²⁴

- 1) The significant economic role of the tobacco industry: This industry contributes around 1.66% to Indonesia's GDP and employs more than 5.98 million people.
- 2) Widespread cultural acceptance of smoking: The 2018 Riskesdas survey showed that the prevalence of smoking among adult males reached 62.9%.
- 3) Strong tobacco industry lobbying: A report from the Southeast Asia Tobacco Control Alliance (SEATCA) revealed that the tobacco industry in Indonesia has significant access to policymakers.

Additional challenges include:

- 1) Decentralized government: This makes it difficult to implement uniform policies across the country.
- 2) Economic dependence of certain regions on tobacco production: Some areas in East Java heavily rely on the tobacco industry for their economy.

4. International Legal Obligations

a. France

As a member state of the EU and a party to the WHO Framework Convention on Tobacco Control (FCTC), France is bound by strict international obligations. These include the

²⁴ Muchjidin Rachmat, "Pengembangan Ekonomi Tembakau Nasional: Kebijakan Negara Maju Dan Pembelajaran Bagi Indonesia," *Analisis Kebijakan Pertanian* 8, no. 1 (2016): 67, <https://doi.org/10.21082/akp.v8n1.2010.67-83>.

implementation of Directive 2014/40/EU on tobacco products, which regulates aspects such as packaging, labeling, and marketing of tobacco products. France has consistently met and even exceeded the standards set by the FCTC. For example, France implemented plain packaging for tobacco products in 2016, going beyond the minimum requirements of the FCTC.²⁵

b. Indonesia

Indonesia is one of the few countries that has not ratified the WHO Framework Convention on Tobacco Control (FCTC). This non-participation affects the domestic legal framework and limits international pressure for stricter tobacco regulation. However, Indonesia remains bound by other international human rights obligations related to the right to health, including the International Covenant on Economic, Social and Cultural Rights (ICESCR), which Indonesia ratified in 2006.²⁶

5. Significant Legal Precedents

a. France

- 1) *JTI v. Ministry of Health* (2016): The Conseil d'État rejected the industry's challenge against plain packaging, affirming the priority of public health.
- 2) *Philip Morris v. France* (2018): The European Court of Justice upheld the validity of Directive 2014/40/EU, strengthening France's position on strict tobacco regulation.
- 3) *British American Tobacco France v. Ministry of Health* (2019): The Conseil d'État rejected the lawsuit against the ban

²⁵ “Direktorat Pengawasan Keamanan, Mutu, Dan Ekspor Impor Obat, Narkotika, Psikotropika, Prekursor Dan Zat Adiktif Tahun 2023,” 2023.

²⁶ Aditia Bagus Santoso, Widia Edorita, and Ledy Diana, “Analisis Hukum Dampak Belum Diratifikasi Kerangka Kerja Konvensi Pengendalian Tembakau (Framework Convention on Tobacco Control) Bagi Indonesia,” *FIAT JUSTISIA: Jurnal Ilmu Hukum* 8, no. 4 (2015): 681–94, <https://doi.org/10.25041/fiatjustisia.v8no4.315>.

on menthol in cigarettes, reaffirming France's commitment to strict anti-tobacco policies.²⁷

b. Indonesia

- 1) Judicial Review of Law No. 36 of 2009 on Health (2011): The Constitutional Court annulled several provisions related to graphic health warnings.
- 2) Lawsuit against Government Regulation No. 109 of 2012 (2015): The Supreme Court rejected the tobacco industry's lawsuit, upholding several aspects of tobacco regulation.
- 3) Supreme Court Decision No. 444 K/TUN/2017 (2017): The Supreme Court upheld the government's decision to increase cigarette excise taxes, showing support for tobacco control efforts through fiscal policy.

6. Policy Implications and Implementation Challenges

a. France

France's strict anti-tobacco policies have shown positive results. According to data from Santé Publique France, the daily smoking prevalence among adults decreased from 29.4% in 2016 to 24% in 2019. However, implementation challenges remain, including:²⁸

- 1) Enforcing smoking bans in public places: Despite strict laws, compliance remains an issue in some areas.
- 2) Addressing illegal trade: Increased cigarette prices have led to a rise in illegal trade, necessitating stronger law enforcement strategies.
- 3) Tackling socio-economic disparities in tobacco use: Smoking prevalence remains high among lower socio-economic groups.

²⁷ Wicipto Setiadi, "Penolakan Gugatan Indonesia Oleh WTO Atas Kebijakan Australia Mengenai Kemasan Rokok Polos," *Esensi Hukum* 1, no. 1 (2019): 12–23, <https://doi.org/10.35586/esensihukum.v1i1.11>.

²⁸ Jeane Neltje Saly, "Laporan Akhir Penelitian Hukum Efektivitas Peraturan Terkait Pengendalian Produk Tembakau Terhadap Kesehatan," no. September (2011): 1–143.

b. Indonesia

Indonesia faces greater challenges in implementing tobacco control policies:²⁹

- 1) Inconsistent enforcement: Decentralized governance leads to significant variation in policy implementation and enforcement across regions.
- 2) Industry resistance: The tobacco industry actively opposes stricter regulations through lobbying and legal challenges.
- 3) Economic dependency: Some regions heavily rely on the tobacco industry for employment and revenue, making policy transition difficult.
- 4) Social norms: Widespread social acceptance of smoking makes behavioral change a major challenge.

7. Comparative Analysis and Lessons Learned

The comparison between France and Indonesia reveals significant differences in tobacco regulation approaches:

- a. Legal Framework: France has a comprehensive and integrated legal framework aligned with EU standards, whereas Indonesia has a more fragmented approach.
- b. Enforcement: France has stronger and more coordinated enforcement mechanisms, while Indonesia faces challenges in coordination among agencies and regions.
- c. Socio-Economic Context: France has successfully reduced economic dependency on the tobacco industry, while Indonesia still faces a dilemma between public health and economic interests.
- d. International Commitment: France's membership in the EU and the FCTC provides additional impetus for strict regulation,

²⁹ Tobacco Tactic, "Tobacco Industry Interference with Endgame Policies," 2024, 1–12, <https://tobaccotactics.org/article/tobacco-industry-interference-with-endgame-policies/>.

whereas Indonesia's non-participation in the FCTC limits international pressure.³⁰

Lessons Learned:

- a. Policy Integration: France demonstrates the importance of a cohesive approach to tobacco regulation, integrating health, fiscal, and enforcement policies.
- b. Role of the Judiciary: Court decisions in both countries highlight the importance of judicial interpretation in shaping policy implementation.
- c. Economic Transition Management: France's experience in reducing dependency on the tobacco industry can provide insights for Indonesia.
- d. Evidence-Based Approach: Both countries can leverage scientific research to develop more effective policies.

IV. The roles played by the French and Indonesian governments in implementing cigarette circulation regulations within society to minimize potential negative impacts

The large circulation of cigarettes in Indonesia and France requires a strong role between the government as the organizer and regulator, and the community as the implementer of existing regulations. Both countries share the same principle and aim to not allow cigarette circulation and marketing indiscriminately. The existence of legal

³⁰ Agus Wibowo, "Hukum Di Era Globalisasi Digital," *Penerbit Yayasan Prima Agus Teknik*, 2023, 1–185.

regulations made by the local governments enables these two countries to carefully manage the marketing process to prevent and reduce adverse impacts that may occur on public health and to avoid an increase in the number of underage smokers.³¹

Tobacco regulation in France and Indonesia reflects significant differences in legal approaches, socio-political contexts, and economic considerations in each country. This in-depth analysis will explore the complexities of tobacco regulation in both jurisdictions, focusing on enforcement mechanisms, judicial interpretation, and the interaction between domestic law and international obligations.

1. France

Tobacco regulation in France is embedded within the broader EU legal framework, particularly Directive 2014/40/EU on tobacco products. This creates a complex interaction between national and supranational law.

a) Constitutional Considerations

The Conseil Constitutionnel, France's highest constitutional authority, has repeatedly upheld strict tobacco control measures. In Decision No. 2015-727 DC, the Council affirmed the constitutionality of plain packaging requirements, balancing public health concerns with property rights and business freedoms. Another important case is Decision No. 2009-580 DC, where the Conseil Constitutionnel considered the constitutionality of the Law on dissemination and protection of creation on the Internet. Although not directly related to tobacco, this case established important principles about balancing

³¹ Putu Ayu Swandewi Astuti, Mary Assunta, and Becky Freeman, "Why Is Tobacco Control Progress in Indonesia Stalled? - A Qualitative Analysis of Interviews with Tobacco Control Experts," *BMC Public Health* 20, no. 1 (2020): 1–12, <https://doi.org/10.1186/s12889-020-08640-6>.

freedom of expression and public interests, which are relevant in the context of tobacco regulation.³²

b) Enforcement Mechanisms

Enforcement of tobacco regulations in France involves several agencies, including:³³

- Direction Générale de la Concurrence, de la Consommation et de la Répression des Fraudes (DGCCRF) for market supervision
- Local health authorities for compliance in public spaces
- Customs officers for border control and prevention of illegal trade

According to the DGCCRF 2020 annual report, the agency conducted over 4,000 inspections related to tobacco products, resulting in an infringement rate of approximately 15%. This indicates significant challenges in enforcement, despite strong efforts. A major challenge is enforcing smoking bans in public spaces, where cultural norms often conflict with legal requirements. The French government has responded by increasing fines and empowering more officials to issue violation notices, as evidenced by Decree No. 2015-768.

c) Judicial Interpretation

French courts generally adopt a pro-public health stance in tobacco-related cases. In a significant decision (Conseil d'État,

³² Soimin dan Mashuriyanto, "Mahkamah Konstitusi Dalam Sistem Ketatanegaraan Indonesia," *UII Press Yogyakarta*, 2013, 59–67, <https://law.uui.ac.id/wp-content/uploads/2018/01/Editor-Buku-Mahkamah-Konstitusi-Dalam-Sistem-Ketatanegaraan-Di-Indonesia.pdf>.

³³ Consumer Affairs, Fraud Control, and Digital Affairs, "Directorate General for Competition Policy, Consumer Affairs and Fraud Control Remit The DGCCRF, Which Is Part of the French Ministry for the Economy, Industry and Digital Affairs, Helps Plan and Implement Economic Policy by Overseeing the Smooth Functioning of Every Aspect of the Markets for the Benefit of Both Businesses and Consumers. Consumer Protection For Further Information :," n.d.

sections 10 and 9, 23/07/2012, 337538), the Conseil d'État upheld a strict interpretation of advertising bans, rejecting arguments from the tobacco industry based on freedom of expression. Another notable case is the decision of the Cour de Cassation (French Court of Cassation) on September 26, 2018 (No. 17-85.650), which affirmed the responsibility of cigarette manufacturers for addiction and diseases caused by their products. This decision reinforces France's legal position in supporting public health over tobacco industry interests.

d) Socio-Political Context

France's stringent approach is influenced by:

- (i) Strong anti-tobacco advocacy groups, such as the Comité National Contre le Tabagisme (CNCT)
- (ii) High healthcare costs related to smoking-related diseases. According to a study published in the *Bulletin Épidémiologique Hebdomadaire*, the social cost of tobacco in France is estimated at 120 billion euros per year.
- (iii) EU pressure for aligned tobacco control policies

However, these measures face opposition from tobacco farmers in regions such as Alsace, creating political tensions that sometimes hinder stricter regulation. Reports from the *Chambre d'Agriculture Grand Est* indicate that the tobacco sector in this region employs about 1,500 people and generates an annual revenue of around 20 million euros.

2. Indonesia

Indonesia's approach to tobacco regulation is very different from France's, reflecting a unique socio-economic and political landscape.

a) Constitutional Considerations

Unlike France, Indonesia's Constitutional Court is more receptive to industry arguments. In Decision No. 57/PUU-IX/2011, the Court annulled provisions of the Health Law that

would have required graphic health warnings, citing inadequate legal grounds. However, in Decision No. 22/PUU-XVIII/2020, the Constitutional Court rejected a judicial review petition against Law No. 39 of 2007 on Excise, which affirms the government's authority to impose excise duties on tobacco products. This indicates that Indonesian courts do not always take a consistent stance on tobacco-related issues.³⁴

b) Enforcement Mechanisms

Enforcement of tobacco regulations in Indonesia is fragmented and often inconsistent:³⁵

- (i) The National Agency of Drug and Food Control (BPOM) oversees product safety and labeling.
- (ii) Local governments are responsible for implementing smoke-free areas, leading to varying enforcement across regions.
- (iii) The Ministry of Finance manages excise duties, often prioritizing revenue over health concerns.

According to a report from the Ministry of Health in 2020, only about 50% of districts and cities in Indonesia have fully implemented smoke-free area (KTR) regulations. This indicates significant challenges in achieving consistent enforcement nationwide. A major challenge is the decentralized nature of governance in Indonesia, which complicates uniform implementation of national policies. A study by the Center for Social Security Studies at the University of Indonesia found that implementation of KTR policies varies widely across regions, with compliance rates ranging from 15% to 80%.

c) Judicial Interpretation

³⁴ Abhisam Demosa Makahekum, "Ahli Pemohon : Rokok Sebagai Barang Legal , Perlu Jaminan Memilih Merokok," no. November (2011): 1–2.ah

³⁵ M.Hum. Riati Anggriani, SH., Mars., "Peraturan BPOM 2019," 2019, 1–576.

Indonesian courts have shown a more accommodative stance toward industry interests. In a 2016 case (No. 66 P/HUM/2018), the Supreme Court annulled regulations requiring larger health warnings on cigarette packaging, citing conflicts with higher laws. However, there are also cases where courts have supported tobacco control measures. For example, in Decision No. 34/G/2018/PTUN-JKT, the Jakarta Administrative Court rejected a tobacco industry's lawsuit against regulations on tobacco product packaging and labeling.

d) Socio-Political Context

Indonesia's approach is heavily influenced by:

- (i) The economic significance of the tobacco industry, especially in regions like East Java. According to data from the Ministry of Industry, the tobacco industry contributes approximately 1.66% to Indonesia's GDP and employs over 5.98 million people.
- (ii) Cultural acceptance of smoking, particularly among men. The 2018 Riskesdas survey shows a smoking prevalence of 62.9% among adult men.
- (iii) Strong tobacco industry lobbying. Reports from the Southeast Asia Tobacco Control Alliance (SEATCA) reveal that the tobacco industry in Indonesia has significant access to policymakers and often influences regulatory decisions.³⁶

3. International Legal Obligations and Their Impact

The differing approaches of France and Indonesia are further highlighted by their stances on international tobacco control agreements:

- (i) France, as an EU member and a party to the WHO Framework Convention on Tobacco Control (FCTC), is bound by strict

³⁶ Badan Kebijakan Perdagangan, "TradePost - Emagazine Edisi Desember 2023," *Sekretariat Badan Kebijakan Perdagangan Kementerian Perdagangan RI*, 2023, 69–73.

international obligations. France ratified the FCTC on October 19, 2004, and has consistently implemented the convention's recommendations.

- (ii) Indonesia remains one of the few countries that has not ratified the FCTC, limiting international pressure for stronger tobacco control measures. Despite efforts from civil society groups and some politicians to push for ratification, the Indonesian government remains reluctant, citing economic concerns.³⁷

4. Further Comparative Analysis

a) Pricing and Taxation Policies

France has consistently increased tobacco taxes as a strategy to reduce consumption. According to data from the Observatoire Français des Drogues et des Toxicomanies (OFDT), the average price of a pack of cigarettes in France rose from €6.60 in 2010 to €10.00 in 2020. This policy has contributed to a decrease in smoking prevalence from 34.5% in 2016 to 30.4% in 2019 among adults aged 18-75. In contrast, Indonesia has some of the lowest cigarette prices in the world. Despite gradual increases in tobacco excise duties, prices remain relatively affordable. Reports from the Ministry of Finance indicate that tobacco excise revenue increased from IDR 147.7 trillion in 2018 to IDR 172.2 trillion in 2020. However, the effectiveness of this policy in reducing tobacco consumption remains limited.³⁸

b) Health Warnings and Plain Packaging

France implemented plain packaging for tobacco products on January 1, 2017, becoming the second country in the world to do so after Australia. Studies conducted by Santé Publique France

³⁷ Ruth Roemer, Allyn Taylor, and Jean Lariviere, "Origins of the WHO Framework Convention on Tobacco Control," *American Journal of Public Health* 95, no. 6 (2005): 936–38, <https://doi.org/10.2105/AJPH.2003.025908>.

³⁸ <https://globalactiontoendsmoking.org/research/tobacco-around-the-world/france/>

indicate that the introduction of plain packaging, combined with higher prices, contributed to a reduction of 1.6 million smokers between 2016 and 2018. Indonesia, on the other hand, only introduced graphic health warnings in 2014, with smaller sizes compared to many other countries. Government Regulation No. 109 of 2012 requires graphic health warnings to cover 40% of the front and back of cigarette packaging. However, the effectiveness of these warnings remains debated, with a study from the University of Indonesia showing that only 24% of smokers reported that the warnings motivated them to quit smoking.³⁹

c) Advertising and Promotion Bans

France has had a comprehensive ban on tobacco advertising and promotion since the implementation of the Loi Évin in 1991. This ban covers all forms of direct and indirect advertising, including event sponsorship. Strict enforcement has led to a significant reduction in the visibility of tobacco products in media and public spaces. In contrast, Indonesia still allows some forms of tobacco advertising and promotion. While there are restrictions on advertising in broadcast and print media, outdoor advertising and point-of-sale promotions are still permitted. Reports from the National Tobacco Control Commission indicate that the tobacco industry in Indonesia spends over IDR 5 trillion annually on advertising and promotion.⁴⁰

d) Smoke-Free Areas

³⁹ Anne Pasquereau et al., “Plain Packaging on Tobacco Products in France: Effectiveness on Smokers’ Attitudes One Year after Implementation,” *Tobacco Induced Diseases* 20, no. April (2022): 1–11, <https://doi.org/10.18332/tid/146600>.

⁴⁰ European Institutions, “Directive 2003/33/EC of the European Parliament and of the Council of 26 May 2003 on the Approximation of the Laws, Regulations and Administrative Provisions of the Member States Relating to the Advertising and Sponsorship of Tobacco Products,” *Official Journal of the European Union*, no. March (2003): 16–19.

France has implemented a comprehensive smoking ban in public places since 2007. Decree No. 2006-1386 prohibits smoking in all indoor workplaces, public transportation, schools, and other enclosed public places. In 2015, this ban was extended to outdoor playgrounds, and in 2016, to vehicles carrying children under 12 years old. Compliance with the smoking ban in France is relatively high. According to a survey conducted by the Institut national de prévention et d'éducation pour la santé (INPES) in 2018, 90% of respondents reported that the smoking ban in workplaces and enclosed public places is respected.⁴¹

In Indonesia, the implementation of Smoke-Free Areas (KTR) is regulated under Law No. 36 of 2009 on Health and Government Regulation No. 109 of 2012. However, its implementation varies significantly across the country due to the decentralization of authority to local governments. A study conducted by the Center for Social Security Studies at the University of Indonesia in 2019 showed that out of 514 districts/cities in Indonesia, only about 345 (67%) have KTR regulations, and of those, only about 50% are effective in their implementation. Major challenges include a lack of law enforcement, resistance from business owners, and low public awareness.⁴²

e) Control of Sales to Minors

France has strict laws regarding the sale of tobacco products to minors. Since 2009, the sale of cigarettes to individuals under 18 has been prohibited. Violations of this ban can result in fines of

⁴¹ Geoffrey T Fong et al., "Evaluation of the Smoking Ban in Public Places in France One Year and Five Years after Its Implementation: Findings from the ITC France Survey.," *Bulletin Epidemiologique Hebdomadaire (Paris, France)* 20, no. 21 (2013): 217–23, <http://www.ncbi.nlm.nih.gov/pubmed/24803715><http://www.pubmedcentral.nih.gov/articlerender.fcgi?artid=PMC4009376>.

⁴² Mardi Idris, "Implementasi Peraturan Daerah Kabupaten Tanah Datar No 04 Tahun 2019 Tentang Tanpa Rokok Di Puskesmas Lintau Buo Dan Puskesmas Lintau Buo Utara," *Skripsi*, no. 04 (2021).id

up to €3,750 for a first offense and up to €7,500 for repeat offenses. To enhance enforcement, the French government has implemented a "client mystère" (mystery shopper) program where young agents are sent to attempt to purchase cigarettes. According to reports from the Direction générale de la santé, this program has improved seller compliance, with the refusal rate of sales to minors increasing from 40% in 2011 to 68% in 2019.

In Indonesia, although there is a ban on selling cigarettes to individuals under 18 years old based on Government Regulation No. 109 of 2012, enforcement remains weak. The 2019 Global Youth Tobacco Survey (GYTS) found that 64.5% of students aged 13-15 who smoke reported no difficulty in purchasing cigarettes from stores. A study conducted by the Demographic Institute of the University of Indonesia in 2020 found that over 70% of retail cigarette sellers do not check the buyer's age, and only 15% refuse to sell cigarettes to minors. The lack of strict penalties and low public awareness are major factors contributing to the weak enforcement of this regulation.⁴³

f) Smoking Cessation Policies

France has developed a comprehensive program to help smokers quit. Since 2016, the "Mois sans tabac" (Month Without Tobacco) program has been held every November, offering intensive support for those who want to quit smoking. The French national health insurance also provides reimbursement for nicotine replacement products up to €150 per year per person. According to data from Santé Publique France, the number of smokers attempting to quit increased from 1.6 million in 2016 to 2 million in 2019. These programs, combined with pricing

⁴³ Hario Megatsari et al., "Tobacco Advertising, Promotion, Sponsorship and Youth Smoking Behavior: The Indonesian 2019 Global Youth Tobacco Survey (GYTS)," *Tobacco Induced Diseases* 21, no. December (2023): 1-7, <https://doi.org/10.18332/tid/174644>.

policies and smoking bans, have contributed to a decrease in smoking prevalence in France.

In Indonesia, efforts to help smokers quit are still limited. Although there are smoking cessation counseling services at some community health centers (puskesmas) and hospitals, their coverage is very limited. According to data from the Ministry of Health in 2020, only about 10% of puskesmas in Indonesia offer smoking cessation counseling services. A study conducted by Gadjah Mada University in 2019 found that only 30% of smokers in Indonesia have ever attempted to quit, and of those, only 5% have successfully quit permanently. The lack of systematic support and limited access to nicotine replacement therapy are major challenges in smoking cessation efforts in Indonesia.⁴⁴

5. Economic and Public Health Implications

The differing approaches between France and Indonesia in tobacco regulation have significant implications for both economies and public health in the two countries.

In France, strict tobacco control policies have contributed to a decrease in smoking prevalence and improved public health. According to reports from Santé Publique France, daily smoking prevalence among adults decreased from 29.4% in 2016 to 24% in 2019. This is estimated to have saved healthcare costs by €3.5 billion per year. However, these policies have also impacted the agriculture and retail sectors. The number of tobacco farmers in France decreased from 2,000 in 2000 to around 1,000 in 2020. The French government has implemented assistance programs to help tobacco farmers transition to other crops.⁴⁵

⁴⁴ Sam S. Chang, "Editorial Comment," *Journal of Urology* 204, no. 2 (2020): 383–84, <https://doi.org/10.1097/JU.0000000000001114>.

⁴⁵ Pasquereau et al., "Plain Packaging on Tobacco Products in France: Effectiveness on Smokers' Attitudes One Year after Implementation."

In Indonesia, the more lenient approach to tobacco regulation has maintained the economic contribution of the industry. In 2019, the tobacco industry contributed approximately 1.66% of Indonesia's GDP and employed over 5.98 million people. Government revenue from tobacco excise reached Rp 172.2 trillion in 2020. However, the health costs associated with tobacco consumption in Indonesia are very high. A study conducted by the Demographic Institute of the University of Indonesia estimates that the total economic cost of tobacco consumption in Indonesia reached Rp 596.61 trillion in 2019, far exceeding the revenue from tobacco excise.⁴⁶

V. Conclusion

1. Differences in regulation of cigarette or tobacco distribution between France and Indonesia: France and Indonesia have different approaches in regulating the distribution of cigarettes and tobacco products. France applies very strict and comprehensive regulations, with a primary focus on protecting public health. This country prohibits the sale of cigarettes to individuals under the age of 18, prohibits smoking in public places and workplaces, requires graphic health warnings on cigarette packaging, prohibits all forms of cigarette advertising and promotion, and implements high excise and tax policies on tobacco products. Meanwhile, Indonesia is taking a more moderate approach by considering economic aspects and the role of the tobacco industry in the national economy, while still trying to protect society from the negative impacts of smoking.
2. The role of the French and Indonesian governments in implementing cigarette distribution regulations: The French and Indonesian governments have demonstrated a commitment to

⁴⁶ The World Bank, "Menuju Pertumbuhan Inklusif," *Perkembangan Triwulanan Perekonomian Indonesia*, 2018, 1–96, www.bps.go.id.

protecting their citizens from the negative impacts of smoking through regulations and public health campaigns. The French government plays an active role in carrying out health campaigns, enforcing a ban on the sale of cigarettes to minors, a ban on smoking in public places, requiring health warnings on cigarette packaging, prohibiting cigarette advertising and promotion, and implementing high excise and tax policies. On the other hand, the Indonesian government takes a more moderate approach by considering the economic aspects of the tobacco industry, but still tries to protect the public through a ban on selling cigarettes to minors, a ban on smoking in public places, health warnings on cigarette packaging, a ban on cigarette advertising in the media masses, and implementation of excise and taxation policies.

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