



TOBACCO INDUSTRY INTERFERENCE UNDERMINED TOBACCO TAX POLICY IN INDONESIA



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About SEATCA

SEATCA is a multi-sectoral non-governmental alliance promoting health and saving lives by assisting ASEAN countries to accelerate and effectively implement the evidence-based tobacco control measures contained in the WHO FCTC. Acknowledged by governments, academic institutions, and civil society for its advancement of tobacco control movements in Southeast Asia, the WHO bestowed on SEATCA the World No Tobacco Day Award in 2004 and the WHO Director-General's Special Recognition Award in 2014.

For more information, visit: www.seatca.org

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ABBREVIATIONS

- Association of Southeast Asian Nation (ASEAN)
- Association of Indonesian Tobacco Farmers (APTI)
- Center for Indonesia Taxation Analysis (CITA)
- Center for Social Security Studies-University of Indonesia (PKJS-UI)
- Center of Reform on Economics (CORE)
- Cigarette Company Association (Gapero)
- Civil Society Association/Perhimpunan Masyarakat Madani (PRIMA)
- Coalition for Harmonious Healthy Communities/Koalisi Masyarakat Sehat Harmonis (KMSH)
- Commission of Business Competition Supervisor (KPPU)
- Discourse Network Analyzer (DNA)
- Federation of Cigarette, Tobacco, Food and Beverage Workers' Unions - Indonesia Labor Union (FSP RTMM-SPSI)
- Golongan Karya Party (Golkar Party)
- Independent Research and Advisory Indonesia (IRAI)
- Indonesia Cigarette Industry Community Forum (Formasi)
- Indonesia Development and Islamic Studies (IDEAS)
- Indonesia Tobacco Society Alliance (AMTI)
- Indonesian Cigarette Factory Association (GAPPRI)
- Indonesian Cigarette Production Partners (MPSI)
- Indonesian Consumers Foundation (YLKI)
- Indonesian Employers Association (APINDO)
- Indonesian Market Traders Association (APPSI)
- Indonesian Regional Science Association (IRSA)
- Indonesian White Cigarette Manufacturers Association (Gaprindo)
- International Tobacco Growers Association (ITGA)
- Institute for Development of Economics and Finance (INDEF)
- Jakarta City Residents Forum (FAKTA)
- Kebangkitan Bangsa Party (PKB Party)
- Malang Cigarette Company Association (Gaperoma)
- Ministry of Finance, Republic of Indonesia (MOF)
- Ministry of Health, Republic of Indonesia (MOH)
- Ministry of Health-Directorate of Non-Communicable Disease Prevention and Control (MOH-NCD)
- Ministry of Health-National Health Research Institution (MOH-NHR)
- Ministry of Industry, Republic of Indonesia (MOI)
- Ministry of Women Empowerment and Child Protection (MoWECP)
- Muhammadiyah Tobacco Control Center-University of Muhammadiyah Yogyakarta (MTCC-UMY)
- National Commission of Tobacco Control (NCTC)
- National Development Planning Agency (Bappenas)
- National Kretek Conservation Committee (KNPK)
- Pengurus Besar Nahdlatul Ulama (PBNU)
- Persatuan Pembangunan Party (PPP Party)
- University of Gadjah Mada (UGM)
- University of Padjadjaran (UNPAD)
- University of Airlangga (UNAIR)

EXECUTIVE SUMMARY

In 2017, the Ministry of Finance made an important decision on tobacco tax simplification and issued the Minister of Finance Regulation on Tobacco Excise Tax to increase tax for 2018 and at the same time stipulated a roadmap for the simplification of tax tiers, reducing from 12 tiers to 5 tiers by 2021. The tier simplification roadmap was a win for public health, as having fewer tiers will close the tax and price gaps and reduce the incentive for smokers to switch to cheaper cigarettes.

The simplification roadmap, however, lasted only a year. At the end of 2018, following strong pressure from various pro-tobacco industry groups and institutions and systematic interference from the tobacco industry, the Government announced it will not increase the excise tax in 2019 and revoked the simplification roadmap.

The tobacco industry used all possible avenues to interfere in the development of tobacco excise policy. The industry mobilized front groups, religious groups, academia, and research institutes, generating support to oppose tax increase and tiers simplification. Inside the Government, pro-industry spokespersons influenced the decision-making process up to the highest executive level (President's level).

The tobacco industry used media successfully to create pressure in the public sphere and influence policy makers. Throughout 2018 the tobacco industry, using the voice of various allies, bombarded the media with messages opposing tax increase and tiers simplification. All of the messages were well aligned and repeated by various spokespersons, so that they reinforced one another. In contrast, voices from health groups that support tax increase and simplification were less in frequency and magnitude compared to the pro-tobacco industry voices that were more frequent and consistent.

In 2018, Independent Research and Advisory Indonesia (IRAI) was engaged by the Coordinating Ministry of Economic Affairs to develop a new Tobacco Roadmap. IRAI lists Sampoerna Strategic as one of its clients, and its founder and Head was the former CEO of Sampoerna Foundation. The Tobacco Roadmap, published by the Coordinating Minister of Economic Affairs, has a pro-tobacco industry stance and rehashes past arguments used by the industry to oppose tobacco control. The roadmap was developed mainly

to rationalize the importance of the tobacco industry to Indonesia and to ensure the growth of the tobacco industry until 2045.

The Roadmap contains arguments undermining the tax tiers simplification. The key arguments are:

- tier simplification is not good for the small and medium tobacco industry;
- tier simplification will have a negative impact to the investment climate, and it will destroy the competitive market;
- the 5-year timeframe to simplify the tiers, between 2018 and 2021, is too short to allow a smooth transition period for small tobacco industry which will be most affected by this policy;
- tier simplification will lead to job losses;

The cancellation of the 2018 tax increase and annulment of the tobacco excise simplification roadmap shows the might of the tobacco industry in influencing policy makers and at the same time illustrates the vulnerability of the Government to industry interference. Unless the Government makes serious efforts to prevent such interference from recurring, tobacco industry interference will continue to be the biggest obstacle for Indonesia to advance its tobacco control measures. The tobacco industry should not be regarded as a stakeholder.

Recommendations

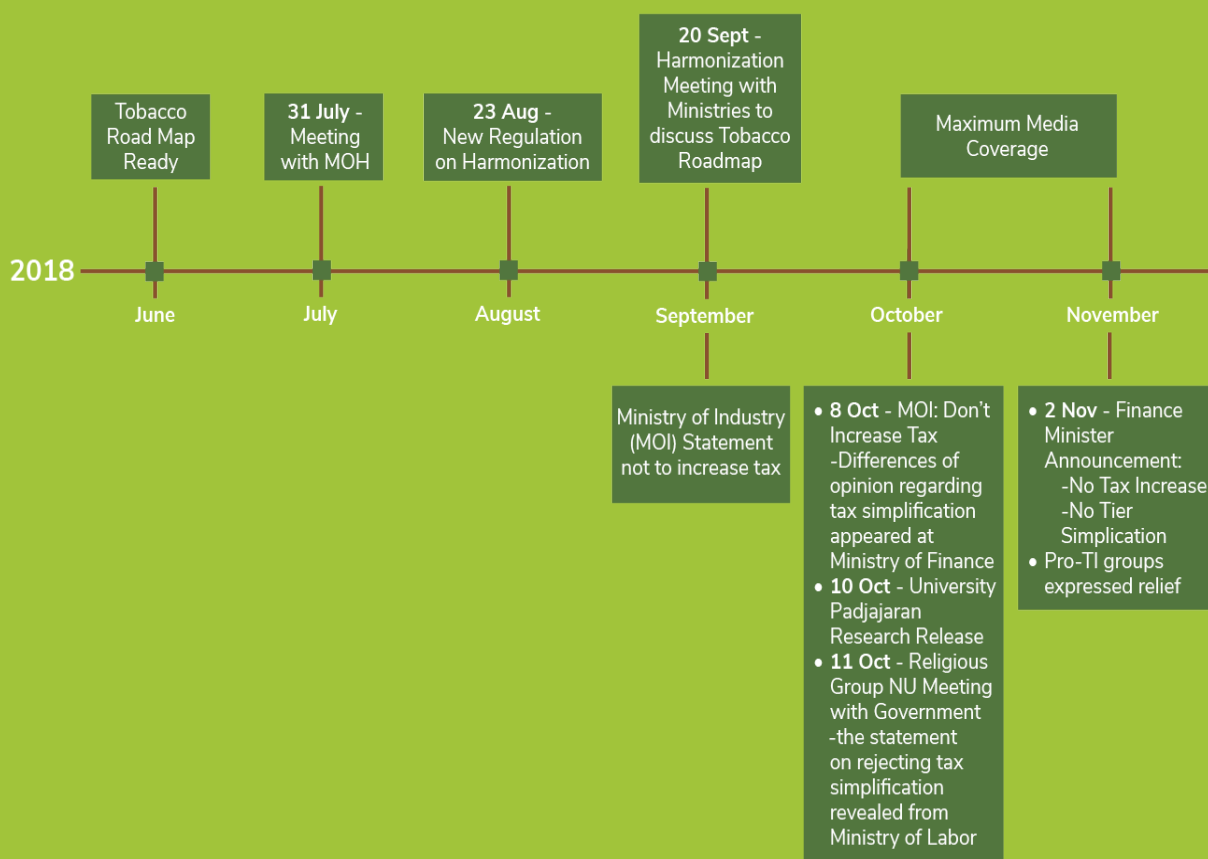
Government action:

1. The Government must adopt a code of conduct that regulates interactions with the tobacco industry and its front groups to ensure transparency and prevent tobacco industry interference.
2. Annual tax increases and the simplification of the multiple tax tiers should be re-introduced for a more efficient and effective way to collect tobacco tax revenues, increase cigarette prices, reduce affordability, and continually discourage consumption.
3. Institutions and individuals with tobacco ties should not be allowed to develop tobacco control policies as it presents a conflict of interest situation.
4. Repeal the provision in the Excise Law that mandates consultation with the tobacco industry in tobacco control policy making process.
5. Require political parties to disclose their funding sources as part of good governance.

Civil society groups:

Monitor and expose pro-industry groups acting on behalf of the tobacco industry.

Roadmap to defeat tobacco tax and tiers simplification



I. INTRODUCTION

1.1 Background

Raising excise taxes on tobacco products has been proven to be the most effective demand reduction measure to reduce tobacco use. Taxes that lead to higher retail prices and significantly reduced affordability reduce tobacco consumption and lower the smoking prevalence that in turn decrease mortality and morbidity.¹ The tobacco industry fears high tax increases and interferes to hamper governments from imposing such taxes on tobacco products. The tobacco industry conducts various activities to keep the taxes low to ensure its products remain affordable and its business is protected.

Indonesia applies multi-tiered, specific excise taxes on tobacco products, and the Ministry of Finance regularly increases the excise tax on an annual basis to adjust with inflation. The tax increases, however, have not been high enough to have any significant impact to reduce consumption. The tobacco excise regime is also one of the most complicated in the world, applying currently 10 different levels of excise tax based on product type (kretek vs non-kretek), manufacturing process (machine-made vs hand-rolled) and production volumes.

As a result, the tobacco tax burden in Indonesia is lower compared to other ASEAN countries such as, Brunei, Thailand and Singapore.² The average excise tax is 44.7% of the retail price.³ As the excise tax is low, cigarette prices in Indonesia are among the cheapest in the region, making cigarettes affordable to children and the poor. Indonesia is constrained from levying a high excise tax burden on tobacco as Excise Law No. 39/2007 imposes a maximum ceiling of 57% of the retail price.⁴

Indonesia has not ratified the World Health Organization Framework Convention on Tobacco Control (WHO FCTC), and in the absence of strong political will and commitment to tobacco control, the country is struggling to implement effective tobacco control measures, including tobacco tax policies. The relationship between the Government and the tobacco industry is long established, with the industry regarded as an important stakeholder. This creates a conducive environment for the industry to table its policy proposals and leaves the Government vulnerable to interference in policy development.

In 2017, the Ministry of Finance made an important decision on tobacco tax simplification and issued the Minister of Finance Regulation No. 146/PMK.010/2017 on Tobacco Excise Tax (Regulation No.146 henceforth). The regulation specified the tax increase for 2018 and at the same time stipulated a roadmap for the simplification of 12 tiers, reducing to 10 tiers in 2018, 8 in 2019, 6 in 2020 and 5 tiers in 2021.⁵ The tiers simplification roadmap was a win for public health, as having fewer tiers will close the tax and price gaps and reduce the incentives for smokers to switch to cheaper cigarettes.

The simplification roadmap, however lasted only a year. At the end of 2018, due to substantial pressure from various front groups, pro-industry institutions and systematic tobacco industry interference, the Government announced its decision not to increase the excise tax in 2019 and revoked the simplification roadmap.⁶ The interference strategies used by the tobacco industry will be addressed in this report.

¹ WHO Framework Convention on Tobacco Control Article 6 Guidelines

² Tan YL. and Dorotheo U. (2016). The Tobacco Control Atlas: ASEAN Region, Third Edition, November 2016. Southeast Asia Tobacco Control Alliance (SEATCA), Bangkok, Thailand.

³ Ministry of Finance Presentation at AFACT 12, Bali, Indonesia

⁴ Article 5 Excise Law No.39/2007

⁵ Article 18. Ministry of Finance Regulation No.146/PMK.010/2017

⁶ Minister of Finance Regulation No.156/PMK.010/2018

1.2. Objectives of the Report

This report will aim to:

- expose the various strategies used by tobacco industry to undermine the implementation of excise tax for 2019 that influenced policy makers to revoke the tiers simplification roadmap;
- identify the key tobacco industry allies and supporters who played important roles;
- review the tobacco industry's arguments against the tax increase and tiers simplification.

It is hoped that the findings of this report would be valuable to assist policy makers to protect public policy from tobacco industry interference and prevent such interference from recurring in the future.

1.3. Methodology

This report reviewed information from various newspapers and online articles provided by PT. Integrasi Media Digital between 1 January and 31 December 2018. A total of 267 articles related to tobacco tax that contained 347 statements by 133 persons from 102 organizations/institutions were analyzed. Discourse Network Analyzer (DNA) software was used to identify the key actors, their roles as well as the messages they delivered. Multiple news articles that contained the same statement from the same person in the same event whether from press release or press conference were counted only once in the DNA analysis. Since the review is based only on articles provided by PT. Integrasi Media Digital, it may not have captured all possible news reports. To identify the tobacco industry interference, additional information from official invitation letters, regulations, and published documents from various sources were also compiled and reviewed.

Raising excise taxes on tobacco products has been proven to be the most effective demand reduction measure to reduce tobacco use. Taxes that lead to higher retail prices and significantly reduced affordability reduce tobacco consumption and lower the smoking prevalence that in turn decrease mortality and morbidity.

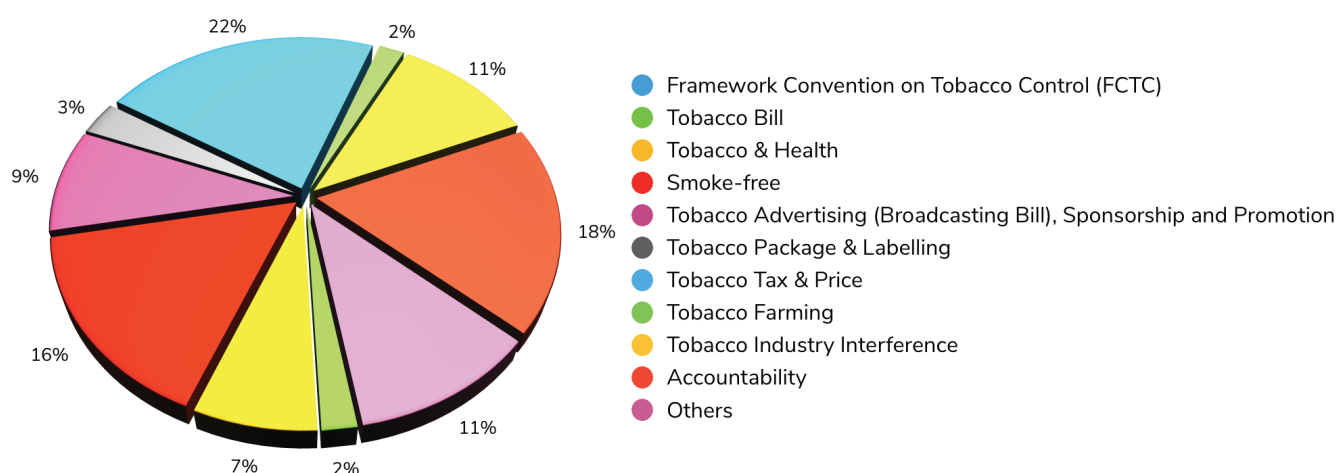
II. TOBACCO INDUSTRY TACTICS

2.1 Use of Media to Influence Policy Development and Implementation

2.1.1. Media Analysis: Tax News Prominent

Review of media coverage on tobacco control news in the media in 2018 revealed tobacco tax was the most reported topic (22.2%) followed by industry accountability (17.5%) and smoke-free issue (15.8%) (Figure 1). This shows that news on tax has the highest frequency and media advocacy is an important means to influence government policy or decision, besides other direct efforts conducted by the tobacco industry.

Figure 1. Share of Voice by Issues



Source: PT. Integrasi Media Digital, Jan-Dec 2018

2.1.2 Discourse in the Media

Throughout 2018, media coverage was dominated by pro-industry statements that are against tax increase and tiers simplification.

As illustrated in Figure 2, the statements by the pro-industry groups against a tax increase peaked in May 2018, where World No Tobacco Day is observed on 31 May. Media statements that supported tax increase and tiers simplification were also high in the same month, however voices against the tax increase were more dominant.

Media coverage containing news in favor of a tax increase and tiers simplification was the highest in September 2018, when the 12th Asia Pacific Conference on Tobacco or Health was held in Bali, whereas the pro-industry statements were relatively low this month. Unfortunately, after September, statements

supporting tax increase and simplification subsided.

In October 2018, precisely one month before the Government announced its decision, the media coverage was again dominated by pro-industry statements urging the Government not to increase the tax and to delay the tiers simplification. The trend shows that in fact, messages against tier simplification reached their peak in October.

Following the Government's announcement of its decision to not raise taxes in 2019 and cancel the tiers simplification roadmap,⁷ the pro-industry groups did not make as many statements compared to the previous month since their mission had been accomplished.

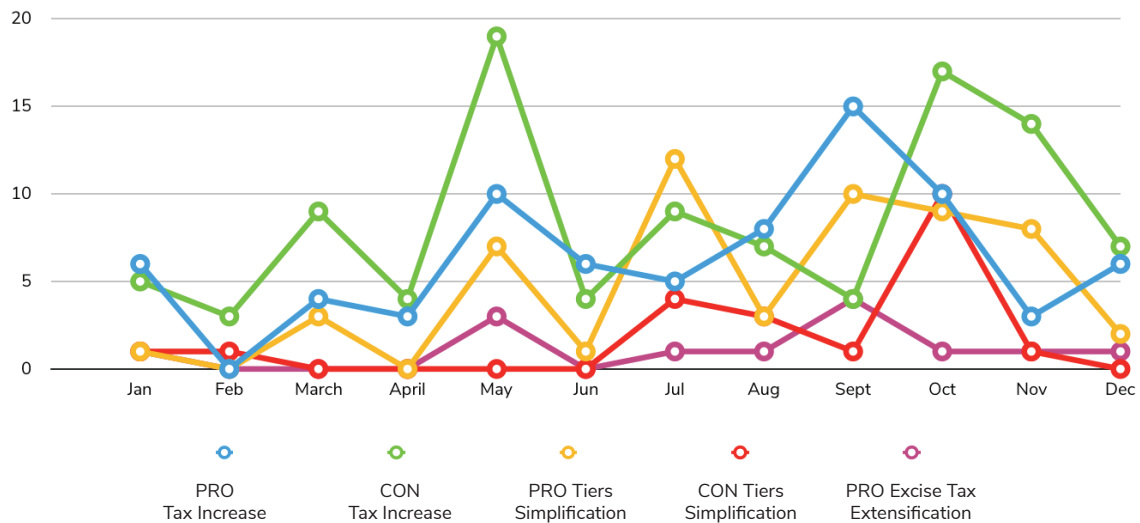
Figure 2. Statements in tobacco tax reported in the media by months and categories 2018

Figure 3 illustrates the discourse network mapped by organizations and concepts. The yellow balloons are the concepts that delivered in the media, where blue represents the name of organization. The size of balloon reflects the magnitude (most mentioned concept and appearances of the organization in the media).

There were four main concepts most revealed in the media: increase tax (pro), oppose tax increase (con), support tiers simplification roadmap (pro) and oppose tiers simplification roadmap (con). On the issue of tiers simplification, some organizations that opposed excise tax increase, such as Formasi⁸, Sampoerna⁹, Indef¹⁰ and CITA¹¹ also supported tiers simplification in the media. Hence the concept of pro tiers simplification was placed between pro tax increase and con tax increase groups, although groups that reject excise increases were still more likely to reject tiers simplification.

When the government announced its decision not to raise excise tax in 2019, there were varying opinions within the groups that reject tax increases.¹² The same situation was also observed for coverage on hand-rolled clove cigarette production. Among industry-related groups, there was support for increasing hand

rolled clove production¹³, while another group opposed the idea.¹⁴ This situation may be due to each messenger having their own client and interests to serve.

Another concept that emerged is the extension of excise tax to non-tobacco products. Some groups opposed to tax increase (con) used this idea to reduce pressure on the tobacco industry but achieve the income target from excise tax. This seemed to offer an acceptable rationale for tax increase.¹⁵

The concept that appeared to be acceptable to both groups (pro and con) of tax increase was the use of excise tax for the Badan Penyelenggara Jaminan Sosial (BPJS), which is the National Health Insurance Administration. However, there is still ongoing debate about this concept within both groups. This approach is used by tobacco industry groups to improve their good image with the government and the public as if they are helping the country to cover the deficit of BPJS.¹⁶

⁷ <http://www.tribunnews.com/bisnis/2018/11/02/sri-mulyani-batalkan-rencana-kenaikan-cukai-rokok-di-tahun-2019>

⁸ <https://ekonomi.kompas.com/read/2018/09/06/152051726/perusahaan-kecil-ingin-penyederhanaan-tarif-cukai-rokok-dijalankan>

⁹ <https://executive.kontan.co.id/news/kurangi-laba-demi-pertahankan-pekerja?page=3>

¹⁰ <http://mediaindonesia.com/read/detail/171086-industri-senang-dengan-penyederhanaan-layer-cukai>

¹¹ <https://ekonomi.kompas.com/read/2018/09/04/151942226/dpr-dukung-penyederhanaan-struktur-tarif-cukai-rokok>

¹² DJBC Dukung Kebijakan Tidak Menaikkan Cukai Rokok, Investor Daily Indonesia, 6 Nov 2018

¹³ <https://www.jawapos.com/ekonomi/12/11/2018/tarif-cukai-batal-naik-industri-rokok-berharap-skt-kicik-tumbuh>

¹⁴ http://koran-sindo.com/page/news/2018-11-14/2/12/Pemerintah_Diminta_Tak_Naikkan_Batas_Produksi_SKT

¹⁵ Pemerintah Tak Bisa Lagi Andalkan Cukai Tembakau, Investor Daily Indonesia, 25 Jan 2018

¹⁶ <https://ekonomi.kompas.com/read/2018/09/22/130957626/cukai-rokok-untuk-tambal-defisit-bpjs-kesehatan-ini-kata-asosiasi>

2.2 Use all means and resources in preventing increase of tobacco excise tax and in annulling the simplification roadmap

2.2.1. Mobilizing pro-industry groups to build support and create public pressure

Table 1 provides five types of pro-industry groups and the arguments they made. Yellow is for those claiming to represent farmers and kretek consumers, and green for tobacco industry associations. Blue represents labor/workers associations, and orange for employers' associations (not specifically related to tobacco). Lastly, white represents independent agencies or research institutions specializing in economy and taxation.

The farmers and kretek consumer groups were reported to have strong association with tobacco companies. For example, Yos Adiguna Ginting, Supervisory Board member of AMTI, is also Commissioner of PT HM

Sampoerna,¹⁷ ITGA is funded by transnational tobacco companies including PMI.¹⁸ APTI and KNPK have links with Djarum Foundation activities.^{19,20}

Table 1. Delivered Concepts by Front Groups in the Media, 2018

FRONT GROUPS ORGANIZATION	AMTI	APTI	KNPK	ITGA	GAPPRI	FORMASI	GAPRINDO	MPSI	GAPERO	GAPEROMA	FSP RTMM-SPSI	APPSI	APINDO	INDEF	CITA	CORE	TOTAL
ARGUMENTS/MESSAGE	Farmers and consumers (kretek)				Tobacco industry association						Labor/workers association	Employers' association*		Independent agency/ research institution**			
Increasing Tax=Increase Illegal Cigarettes	3				4		4			1				2	1		15
Increasing Tax=Threat to Farmer	1	7	1	1													10
Cigarette Price is Expensive Already															3		3
Increasing Tax Will Affect Tobacco Industry Performance	4	1			9	6	5	1				2		4	1	1	34
Increasing Tax Affect National Economy	1							1							1		3
Increasing Tax=Layoff will increase	2				2		3	2			11			1			21
Tax Extension to Raise Govt Income														1	1		2
Tax Extension to Reduce TI Loads	2				3								1		1		7
Tiers Simplification Bad for TI Growth					6												11
TOTAL***	13	9	2	1	24	6	12	4	2	2	11	2	1	8	8	1	106

* Not specifically related to tobacco

** The research institution specializing in economy and taxation

*** The numbers represent the frequency of arguments delivered

¹⁷ <https://www.sampoerna.com/sampoerna/id/about-us/our-people>

¹⁸ <https://ggtc.world/2018/09/27/cozying-up-in-switzerland-pmi-funded-foundations-swiss-branch/>

¹⁹ <http://jmoonwide.blogspot.com/2013/09/beasiswa-dj-temanggung.html>

²⁰ <https://bolehmerokok.com/2019/02/tuduhan-keterlalaan-yayasan-lentera-anak-terhadap-djarum-foundation/>

Some organizations were focused on only one specific argument – how tax increase will affect employment because it will lead to job losses. For example, APPSI focused on the decline in cigarette sales (Industry Performance), and the Federation of Cigarette Tobacco Food and Beverage Workers' Unions (FSP RTMM-SPSI) on increasing layoffs if the Government increased tax.

In terms of number of news items, the argument of industry performance had most pieces of news, followed by layoffs, illegal cigarettes and farmers welfare. Two organizations, CITA and AMTI, delivered most of all arguments in the media, followed by GAPPRI and INDEF. In delivering messages, 25 different individuals from 16 organizations made statements giving them a big presence in the media.

2.2.2 Using political parties to influence the Government

Layoffs, farmers welfare, and Government income were the most often repeated themes voiced by parliament members to oppose a tax increase. Seven out of 10 political parties at the parliament had at least one person opposing cigarette tax increase, regardless of their affiliations as ruling or opposition parties (Table 2). This situation proved that for politicians, defending the interests of farmers and workers sounds more 'heroic' to the public than delivering messages to protect health, especially when Indonesia is facing general elections in 2019. Parliamentarians Misbakhun and Firman Soebagyo according to media reports are the initiator and head of a special committee respectively for the Tobacco Bill^{21,22} that was proposed by National Kretek Conservation Committee (KNPK) in 2012 to protect tobacco industry interests.²³

Table 2. Frequency of Delivered Concept by Political Party Members in the Media, 2018

	ABDUL KADIR K	ANAS NASIKHIN	AMIR USKARA	AHMAD NADIIB	EDDY SUSETYO	DONNY IMAM P	MISBAKHUN	FIRMAN S	HERI GUNAWAN	BAMBANG H	WILGO ZAINAR	TOTAL
CONCEPTS	PKB	PPP	PAN	PDIP	Nasdem	Golkar	Gerindra					
Increasing Tax=Increase Illegal Cigarette							1		1			2
Increasing Tax=Threat to Farmer	1						1	1	1		1	5
Increasing Tax Affect TI Performance				1			1				1	3
Increasing Tax=Reduce Govt. Income					2		1			1	1	5
Increasing Tax Affect National Economy		1										1
Increasing Tax=Layoff will increase			2	1			1			1		5
Tax Extensification to Reduce TI Loads			1								1	2
Increasing Tax= more Poor People										1		1
Tiers Simplification Bad for TI Growth								1				1
TOTAL	1	1	3	1	1	2	3	4	2	3	4	25

²¹<https://www.republika.co.id/berita/nasional/umum/17/07/10/osvwh8280-misbakhun-ruu-pertembakauan-untuk-kepentingan-nasional>

²²<https://www.merdeka.com/uang/cari-masukan-pansus-ruu-pertembakauan-sowan-ke-malang.html>

²³<https://ylbhi.or.id/kronologi-ruu-pertembakauan/>

Table 3 provides details of electoral districts for each politician that opposed tax increase. The electoral district of politicians who rejected excise increases are mostly in the region where tobacco farmers are located and the tobacco industry presence is significant, namely West Java, East Java, Central Java and West Nusa Tenggara. While there is no evidence

to prove the tobacco companies funded their campaign, since disclosure of campaigns funds is not required, the consistency between pro-tobacco industry messages by politicians from a tobacco growing region is evident in the media. It appears that this is part of attracting constituents of farmers and to get support from the tobacco industry.

Table 3. Electoral Districts and Politicians who Opposed Tax Increase, 2018

Name	Electoral Districts	Voters Number
Abdul Kadir Karding	Central Java VI (Purworejo, Wonosobo, Magelang City and District, Temanggung)	128,037
Amir Uskara	South Sulawesi I (Selayar, Bantaeng, Jeneponto, Takalar, Gowa, Makassar)	67,925
Ahmad Nadjib	West Java II (Bandung and Bandung Barat District)	23,358
Andreas Eddy Susetyo	East Java V (Greater Malang, Malang City and District and Batu City)	56,160
Donny Imam Priambodo	Central Java III (Grobogan, Blora, Rembang, Pati)	42,491
Mukhamad Misbakhun	East Java II (Pasuruan City and District, Probolinggo City and District)	66,899
Firman Soebagyo	Central Java III (Pati, Rembang, Blora, Grobogan)	90,757
Heri Gunawan	West Java IV (Sukabumi City and District)	19,998
Bambang Haryo	East Java I (Sidoarjo and Surabaya City)	33,896
Wilgo Zainar	West Nusa Tenggara	55,192
Anas Nasikhin	East Java II (Pasuruan City and District, Probolinggo City and District)	Candidate

Source: <https://wikidpr.org>

The political parties seemed to play a significant role in pressuring the Government not to raise the tax and to withdraw the simplification. This was indicated by Indonesian Vice President Jusuf Kalla, who said that the

Government was actually planning to increase tobacco tax in 2019, however because the Political Parties and tobacco farmers opposed this plan, the Government could not proceed with the plan.²⁴

2.2.3 Involving religious group to pressure the Government to revoke the tobacco excise simplification roadmap

Nahdlatul Ulama (NU) is the biggest socio-religious organization in Indonesia and has significant political influence on the Government. NU took part in pressuring the Government to revoke Regulation No. 146 on Tobacco Excise Tax. On 11 October 2018, the NU Executive Board convened a meeting to discuss tobacco tax and to develop recommendations for the Government.²⁵ They invited the Minister of Labor and representatives from Ministry of Finance, Ministry of Agriculture, and Ministry of Industry as resource persons, and participants included academicians, Government institutions and NU-affiliated organizations.

In its press release, NU urged the Government to immediately revoke the simplification roadmap arguing that simplification is detrimental to the small tobacco producers and will hurt the tobacco farmers.²⁶ Deputy Chairman of NU stated that if the Government

insists on simplifying the tiers, 6 million NU members, who are tobacco farmers, will suffer, and the number of unemployed will increase due to the layoffs of the small tobacco producers.²⁷ The arguments of NU aligns with the arguments raised by the tobacco industry

²⁴ <https://republika.co.id/berita/ekonomi/korporasi/18/11/06/phryph382-jk-ungkap-alasan-cukai-rokok-batal-naik-terkait-pemilu>

²⁵ Pengurus Besar Nahdlatul Ulama, Lembaga Bahtsul Masail Invitation Letter, 6 October 2018

²⁶ <https://www.antaranews.com/berita/757851/nu-minta-cabut-aturan-penyederhanaan-cukai-tembakau>

²⁷ Ibid

front groups, tobacco industry associations and Ministries who opposed tier-simplification.

Presidential Election, the voice of NU as the biggest religious group in Indonesia cannot be ignored.

In the current political climate where the President is running for a second term in the

2.2.4 TI's sponsored research to produce 'misleading' evidence against simplification

The tobacco industry has a record of partnering with academia to create pro-industry evidence and research to support its arguments. The PMI-sponsored Asia Illicit Tobacco Indicator annual reports for Indonesia is conducted by the Economics and Business Research and Development Agency of Gadjah Mada University.^{28 29} In October 2018 when the deliberations on tobacco excise was intensifying, a new voice from the academia, a postgraduate lecturer from the University Padjajaran, surfaced in the media. The academician had conducted a simulation study³⁰ and concluded that excise simplification will slow down the industry volume and reduce the Government's revenue.³¹ The simplification would lead to the decrease of production volume of the hand rolled clove cigarettes (SKT).³² The academic urged the Government to delay the implementation of the tiers simplification.³³

2.2.5 Pro-industry research institute developed tobacco roadmap

In 2018, a research institution previously not involved in tobacco control came to the forefront. Independent Research and Advisory Indonesia (IRAI) was engaged by the Coordinating Ministry of Economic Affairs to develop a new Tobacco Roadmap. IRAI lists Sampoerna Strategic as one of its clients.³⁴ The founder and Head of IRAI, Lin Che Wei, was the former CEO of Sampoerna Foundation, from 2007 to 2008.³⁵ He is now the Policy Advisor of the Coordinating Ministry of Economic Affairs.

The Tobacco Roadmap was published by the Coordinating Minister of Economic Affairs in June 2018. The content of the roadmap is pro tobacco industry and rehashes past arguments used by the industry to oppose tobacco control. The roadmap was developed mainly to rationalize the importance of the tobacco industry to Indonesia and to ensure the growth of the tobacco industry until 2045.

The Roadmap also contains arguments undermining the tax tiers simplification. The key arguments are:

- tiers simplification is not good for the small and medium tobacco industry;
- it will have negative impact to the investment climate, and it will destroy the competitive market;³⁶

- the 5-year timeframe to simplify the tiers, between 2018 and 2021, is considered too short to allow a smooth transition period for small tobacco industry which will be most affected by this policy;³⁷
- tier simplification will lead to job losses;³⁸
- it will increase illicit trade on the premise that the purchasing power of the people is low and therefore the people will prefer to buy illegal cigarettes which are cheaper.³⁹

On 31 July 2018, IRAI sent a letter to the Ministry of Health requesting a meeting with Secretary Director-General of Disease Control to discuss the Tobacco Roadmap. During the meeting with the Ministry of Health, IRAI promoted IQOS, Phillip Morris' new heated tobacco product to officials. The independence

²⁸ Economics and Business Research and Development Agency. Asia Illicit Tobacco Indicator: Indonesia 2017; Gadjah Mada University, Yogyakarta, Indonesia https://illicittobacco.oxfordeconomics.com/media/OXF05304_Indonesia_2017_Report_V4.pdf

²⁹ Economics and Business Research and Development Agency. Asia Illicit Tobacco Indicator: Indonesia 2018; Gadjah Mada University, Yogyakarta, Indonesia https://illicittobacco.oxfordeconomics.com/media/OXF05877_Indonesia_2018_Report.pdf

³⁰ <https://www.republika.co.id/berita/nasional/umum/18/10/10/pgd0sh318-simplifikasi-cukai-berdampak-pada-petani-tembakau-dan-iht>

³¹ Ibid

³² Ibid

³³ Ibid

³⁴ Independent Research and Advisory Indonesia. Client. http://irai.co.id/?page_id=54 (Accessed on 2 March 2019).

³⁵ Lin Che Wei. LinkedIn <https://www.linkedin.com/in/lin-che-wei-1098299>

³⁶ Tobacco Roadmap. Page 228.

³⁷ Tobacco Roadmap. Page 279-280.

³⁸ Tobacco Roadmap. Page 280

³⁹ Tobacco Roadmap. Page 226, 280.

of IRAI as a research institution to advise the government is questionable since it is simultaneously promoting its client's tobacco business.

Information from various sources indicated that the Tobacco Roadmap is being widely disseminated to various Ministries. On 20 September 2018, IRAI convened a Focus Group Discussion on Harmonization of Tobacco Policies, inviting the Coordinating Ministry of Economic Affairs, Ministry of Finance, Ministry of Industry, Ministry of Trade, Ministry of Agriculture, Planning Ministry, Ministry of Health, Ministry of Women Empowerment and

Child Protection, tobacco companies, and civil society organizations on tobacco control. There was no further information on the result of the meeting.

The events above indicate that the tobacco industry is using IRAI to influence the Government through the Tobacco Roadmap in developing regulations and policies that are tobacco industry friendly, and to counter or even undermine existing regulations and policies (including the tiers simplification roadmap) that is counterproductive for the tobacco industry.

2.2.6 Creating champions in the Government to oppose tobacco tax increase and excise tiers simplification

Throughout 2018, various Government officials made statements in the media either supporting or opposing tax increase and simplification for 2019. The statements that opposed tax increase and simplification were from Ministries closely associated with the tobacco industry.

Ministry of Industry

Ministry of Industry has been on the forefront opposing any policies that are not friendly to tobacco industry. From the media coverage in 2018, it is observed that Ministry of Industry is the strongest voice from the Government urging to not raise tobacco tax and to delay the simplification. The Director of Beverage, Tobacco Products and Freshening Materials Industry, Ministry of Industry, promoted the industry's position by consistently requesting the Government not to raise taxes in the light of the decreasing trend of tobacco production in the past few years.⁴⁰ He argued that the number of tobacco companies has also declined due to the tax policies⁴¹ and said the Government needs to give a break to the tobacco industry to recover.⁴² On the simplification issue, he stated it will affect the industry in the medium and low tiers to increase the price and result in job losses.⁴³

After the Government's announcement, the Minister of Industry, Airlangga Hartanto, claimed that the Government's decision to not increase the tax and annulling the simplification roadmap had a positive impact on the tobacco industry.⁴⁴

Ministry of Labor

There was only one media coverage on Ministry of Labor's stand regarding tobacco tax, and the statement was against tiers simplification. The Director General of Industrial Relations Development and Labor Social Security, Ministry of Labor stated that the simplification roadmap that merges the tax between the lowest and highest excise tax of the hand rolled clove cigarettes (SKT) will lead to massive job losses.⁴⁵ The Ministry of Labor's position against the tiers simplification was in line with NU's position which strongly opposed this policy as mentioned earlier. This is likely due to the fact, that the Minister of Labor, Hanif Dhakiri, is from Partai Kebangkitan Bangsa, a political party representing NU.

Coordinating Ministry of Economic Affairs

Prior to the Government's decision on tobacco tax, there was no record of any statement by the Coordinating Ministry of Economic Affairs in the media. However, the Ministry endorsed the Tobacco Roadmap that was developed by IRAI, despite its having Sampoerna Strategic as a client. Following the Government's decision, the Deputy Assistant of Industry Development

⁴⁰ <https://nasional.kontan.co.id/news/tahun-depan-pemerintah-akan-naikkan-tarif-cukai-rokok>

⁴¹ <https://www.cnnindonesia.com/ekonomi/20180920194248-532-331897/kemenperin-minta-tak-ada-kenaikan-cukai-rokok-pada-2019>

⁴² Ibid

⁴³ <https://akurat.co/ekonomi/id-344944-read-kemenkeu-pertimbangkan-revisi-penyederhanaan-layer-tarif-cht>

⁴⁴ <https://ekonomi.kompas.com/read/2018/11/05/174620426/cukai-rokok-tak-naik-menperin-klaim-berefek-positif-ke-industri>

⁴⁵ <https://www.antaranews.com/berita/757851/nu-minta-cabut-aturan-penyederhanaan-cukai-tembakau>

from the Coordinating Ministry of Economic Affairs made a statement that the cancellation of tax increase was to protect the industry from shutting down and to prevent layoffs of the laborers working in the tobacco industry.⁴⁶

Ministry of Finance

While the voice of the Ministry of Finance on the tax increase and simplification debate was prominent in the media, there were also contradicting statements by MoF officials reported. For instance, an official from the Fiscal Policy Agency reiterated that MoF will be consistent in implementing the tiers simplification roadmap until 2021⁴⁷ and that the simplification roadmap is a breakthrough that will increase the Government's revenue.⁴⁸ An official from the Customs and Excise Department had a similar position stating the MoF will be consistent in implementing the tiers roadmap. He also indicated that the tiers

simplification will provide certainty for the tobacco industry.⁴⁹

On the other hand, the Acting Director of Excise Affairs and Facility from MoF Customs and Excise, stated that MoF will not force the implementation of the tiers simplification into 5 layers.⁵⁰ According to him, the Government will consider inputs from the tobacco industry whose position is that the machine made cigarettes and hand-rolled cigarettes cannot be merged into the same category. He further added that there is no need to simplify beyond 8 tiers, as these tiers are sufficient and will accommodate both the requests of the industry and the public health community.⁵¹ However, earlier in July he had said simplification to 5-tiers will make the excise policy more effective in controlling the tobacco consumption and increase Government revenue.⁵²

2.2.7 Interfering with the policy making process of tobacco excise tax

Previously, the Finance Minister had full authority to determine tobacco excise tax. The decision on tax is promulgated through a Finance Minister Regulation after a series of consultative meetings with related Ministries and stakeholders, including the tobacco industry, as mandated by Excise Law No 39/2007, providing an opportunity to the tobacco industry to provide its recommendations.⁵³

On 1 November 2017, the President issued President Instruction No. 7, Year 2017 on Policy Making, Policy Monitoring, and Policy Control at the Ministerial Level and Government Institution level.⁵⁴ This Presidential Instruction provides a mechanism that gives stronger supervisory role to the Coordinating Minister to ensure policy coherence among related Ministries. The President Instruction divides the policy into three categories:⁵⁵

- a. The policy is part of the Ministry's core function and authority that is considered strategic and has significant impact to the public. The Minister is required to deliver a formal submission of the proposed policy to the Coordinating Minister to obtain his consideration before the policy is stipulated;
- b. The policy is inter-ministerial or has wide implication to the function and role of other Ministries. This requires formal submission

of the proposed policy to the Coordinating Minister and inter-ministerial discussion in order to achieve inter-ministerial consensus;

- c. The policy is on the scale of a national level, considered important, strategic, and has significant impact to the public. This requires formal submission of the proposed policy to the President, through the Coordinating Minister, to be discussed in Presidential Cabinet meeting to obtain final decision.

The Finance Minister's full authority to determine tobacco tax policy, particularly excise tax increase is partly eroded by this President Instruction. The decision to raise the tobacco excise tax can no longer be determined solely by the Finance Minister, rather it has to obtain prior agreement of the Coordinating Minister, inter-ministerial consensus, and the President's approval.

⁴⁶ <https://www.cnbcindonesia.com/news/20181217143300-4-46727/cukai-rokok-batal-naik-supaya-tak-ada-phk>

⁴⁷ <http://mediaindonesia.com/read/detail/161113-pemerintah-konsisten-jalankan-peta-jalan-cukai-rokok.html>

⁴⁸ Ibid

⁴⁹ Ibid

⁵⁰ <https://akurat.co/ekonomi/id-344944-read-kemenkeu-pertimbangkan-revisi-penyederhanaan-layer-tarif-cht>

⁵¹ Ibid

⁵² <http://mediaindonesia.com/read/detail/170409-penyederhanaan-tarif-cukai-terus-dilanjutkan>

⁵³ Excise Law No.39/2007 art. 5 (4)

⁵⁴ President Instruction No. 7 Year 2017 on Policy Making, Policy Monitoring, and Policy Control at the Ministerial Level and Government Institution

⁵⁵ Ibid

The new mechanism established by the President Instruction gives space to other Ministers, particularly those who are highly related to tobacco tax policy, to potentially reject tax increase proposed by the Finance Minister. The tobacco industry took this opportunity to “use” their champions within the Government to block excise tax increase and cancel the tiers simplification roadmap in the process.

In addition to the President Instruction, there is also a Minister of Law and Human Rights Regulation that affects the policy making process for tobacco excise. On 23 August 2018, the Minister of Law and Human Rights Regulation issued Regulation on Harmonization of Draft Regulation by Ministers and Non-Ministerial Government Institutions.⁵⁶ This regulation obliges each Ministry or Government Institution to undergo a harmonization process to ensure that the proposed policy is consistent with Pancasila (State principles), the Constitution (UUD 1946), other Laws and Regulations and Courts Decisions, and also to attain inter-ministerial consensus on the subject matter before the policy can be issued by the Minister.

The Finance Minister Regulation No.156/PMK.010/2018 which decided not to increase the excise tax for 2019 and cancelled the tiers simplification roadmap was promulgated after various deliberations mandated by the President Instruction and Ministry of Law and Human Rights Regulation.

As recorded in the media, on 30 October 2018 the Coordinating Minister of Economic Affairs held inter-ministerial discussions on tobacco excise tax and tiers simplification for 2018.⁵⁷ The meeting failed to reach consensus particularly regarding the tiers simplification plan. Due to this deadlock, the matter was brought to the President to be further deliberated by the President and the Cabinet.⁵⁸

On 2 November 2018, following Limited Cabinet⁵⁹ meeting chaired directly by the President, the Finance Minister announced that the Government decided not to increase the

excise tax for tobacco products in 2019⁶⁰ and to revoke its plan to simplify the tiers based on the consideration that the simplification plan could burden the industry as fewer tiers would mean greater excise for small tobacco manufacturers.⁶¹

On 22 November 2018, after the Government announced its decision, the Ministry of Finance held a harmonization meeting as mandated by the Minister of Law and Human Rights regulation, inviting the Ministry of Law and Human Rights, Coordinating the Ministry of Economic Affairs, Executive Office of the Presidential Staff, Ministry of Health, the Ministry of Industry, Ministry of Agriculture, Ministry of Trade, Ministry of Tourism, and Supervisory Board of Pancasila Ideology.⁶²

It cannot be conclusively determined that the tobacco industry played a role in the issuance of the Presidential Instruction and Minister of Law and Human Rights regulation, which has greatly impacted the Finance Minister's authority in making tobacco excise policy, but these executive issuances certainly provide more room for the tobacco industry to interfere in the policy development process. The Tobacco Roadmap provided the rationale for a pro-industry policy.

As elaborated above, the tobacco industry had ample space to influence the Government's policy making process. It was directly involved and engaged in formal deliberations that were convened by the Government. Ironically, the practice of consulting with the tobacco industry in policy process is allowed and even mandated by the existing regulation. The Excise Law obligates the Government to hear the tobacco industry's recommendations before drawing up any tobacco taxation policies.⁶³ Through a media report, the public was informed that the tobacco industry was invited to one of the meetings convened by the Government to reach a common understanding and to get an agreement.⁶⁴ Although this is a clear form of tobacco industry interference that should be avoided, it is not seen as such by the Government.

⁵⁶ Minister of Law and Human Rights Regulation on Harmonization of Draft Regulation by Ministers and Non-Ministerial Government Institutions, No. 23 Year 2018

⁵⁷ *Bisnis Indonesia*. Cukai Tembakau dibawa ke Presiden. 1 November 2018

⁵⁸ *Ibid*

⁵⁹ In Bahasa it is called 'Rapat Terbatas'.

⁶⁰ *The Jakarta Post*. Firms Laud Government for Maintaining Excise Rate. 5 November 2018.

⁶¹ *Ibid*

⁶² Invitation Letter No. UND 572/BKF.2/2018, dated 14 November 2018.

⁶³ Excise Law No.39/2007 art. 5 (4)

⁶⁴ *Bisnis Indonesia*. Cukai Tembakau dibawa ke Presiden. 1 November 2018

III. CONCLUSION

The tobacco industry used all possible avenues to interfere in the development of tobacco excise policy. Outside the Government, the industry mobilized front groups, religious groups, academia, and research institutes, generating support to oppose tax increase and tiers simplification. Inside the Government, the pro-industry spokespersons influenced the decision-making process up to the highest executive level (President's level). The tobacco industry took advantage of the current political situation, where the President, who is running for re-election in 2019, does not want to lose votes from tobacco farmers and tobacco industry workers and lose the support of the tobacco industry.

The tobacco industry used media successfully to create pressure in the public sphere and influence policy makers. Throughout the year of 2018 it was observed that the tobacco industry, using the voice of various allies, bombarded the media with messages opposing tax increase and tiers simplification. All of the messages were well aligned so that they reinforced one another and repeated by various spokespersons. In contrast, voices from health groups that support tax increase and simplification were less in frequency and magnitude compared to the pro-tobacco industry voices that were more frequent and consistent.

IV. WAY FORWARD

The cancellation of the 2018 tax increase and annulment of the tobacco excise simplification roadmap shows the muscle of the tobacco industry in influencing the policy makers and at the same time illustrates the vulnerability of the Government to tobacco industry interference. Unless the Government makes serious efforts to prevent such interference from recurring, tobacco industry interference will continue to be the biggest obstacle for Indonesia to advance its tobacco control measures. The tobacco industry should not be regarded as a stakeholder in tobacco control.

Recommendations

Government action:

1. The Government must adopt a code of conduct that regulates interactions with the tobacco industry and its front groups to ensure transparency and prevent tobacco industry interference.
2. Annual tax increases and the simplification of the multiple tax tiers should be re-introduced for a more efficient and effective way to collect tobacco tax revenues, increase cigarette prices, reduce affordability, and continually discourage consumption.
3. Institutions and individuals with tobacco ties should not be allowed to develop tobacco control policies as it presents a conflict of interest situation.
4. Repeal the provision in the Excise Law that mandates consultation with the tobacco industry in the tobacco control policy making process.
5. Require political parties to disclose their funding sources as part of good governance.

Civil society groups:

Monitor and exposé pro-industry groups acting on behalf of the tobacco industry.



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