

The Effect of The Implementation Of The Tobacco Plain Packaging Act Indonesia Australia Policy Using The Dispute Settlement Behavior Analysis Unit

Syurahbil Fachrezy Fersa¹, Yohanes Alga Setiawan², Faturrahman Al Ghozy, Mahira Afdhila Mulawwani³

¹²³Universitas Andalas, Indonesia

frislidia@yahoo.co.id

Abstract

In 2011, the Australian Parliament had the opportunity to enact the Tobacco Plain Packaging Act, also known as the TPP Act. Because of this piece of legislation, the packaging of all tobacco products is required to be completely free of any trademarks, logos, or images. Indonesia, which is the nation that produces the most tobacco in the world, has challenged the decision made by Australia and has begun legal processes with the World Trade Organization (WTO). The purpose of this study is to investigate the strategy that the nation has taken to deal with the problem that has arisen as a result of the TPP Act. A literature study is the research approach that was utilized in this report. This methodology entails reading and gathering data from journal sources, articles, and other relevant literature sources that are related to the topic matter.

Keywords; *Dispute, Australia, Indonesia, Tobacco*

1. INTRODUCTION

The Tobacco Plain Packaging Act was the world's first plain packaging legislation of tobacco products, and it was passed by the Australian Parliament on November 11, 2011. It went into full effect just one month later, on December 1, 2011. According to the legislation, all cigarettes and other tobacco products must be packaged in plain packaging, which means that there cannot be no color graphics, logos, or product slogans included on the box. Attempting to limit the number of people who smoke or consume tobacco products is the primary objective of the Tobacco Plain Packaging Act, which was enacted with the intention of enhancing public health. On the basis of one of the most important principles of the General Agreement on Tariffs and Trade (GATT), namely the concept of national treatment, Australia has enacted the Tobacco Plain Packaging Act (Bond, 2017).

The items that are imported into a country from a member country should be treated in the same manner as the products that are produced domestically, according to this principle. On the other hand, the application of the principle of national treatment by the country that is hosting the event has the component of not causing harm to other nations. It is well acknowledged that Indonesia is among the top countries in terms of the production of cigarettes. Temanggung, Minahasa, Kudus, and Kediri are the areas of Indonesia that are responsible for the majority of the country's tobacco production. This is despite the fact that Indonesia is home to a large number of cities. It is one of the most significant commodities for the expansion of Indonesia's economy that tobacco is produced. From the beginning to the end of the tobacco industry, millions of people have been employed in various capacities. Theresa Fidelia, 2018

A total of seventy trillion dollars was collected by the government in 2011 from the excise tax on cigarettes, which is one of the goods that are derived from tobacco. By

2007, Indonesia has reached the sixth position on the list of countries that produce the most tobacco in the world, with a total production of 164,851 units. The amount of tobacco leaves that are produced in Indonesia is equivalent to 2.67 percent of the total supply worldwide. This production amount, on the other hand, is not the largest one during the course of the past twenty years. In the year 2001, the agricultural production of tobacco in Indonesia reached more than 200 tons. In point of fact, the demand for tobacco within the United States stays on the rise. It is feared that the implementation of the simple cigarette package policy by the government of Australia would have an effect on the international commerce of tobacco goods. It is not impossible for other nations to follow the decision that the Australian government has made regarding the policy. The Act, which is known as the Tobacco Packaging Act 2011, imposes a number of regulations on the retail packaging of tobacco products as well as the goods that are contained within such packaging.

The physical characteristics of the package, including its lining and wrapping, the coloring of the container, and any trademarks that may be present on the packaging or the tobacco product itself are all subject to these regulations. 2017 Julianto Citation Due to the fact that Indonesia is one of the countries that produces the most cigarettes in the world, the Indonesian government voiced its opposition to the policy restrictions that were implemented by Australia. There are a number of nations that are opposed to the Tobacco Plain Packaging Act 2011, including Cuba, Honduras, the Dominican Republic, and Ukraine. Indonesia is not the only country that is opposed to this legislation. Against Australia's policy, the five countries have launched a case with the World Trade Organization, saying that Australia has breached international trade regulations and does not protect intellectual property rights. The lawsuit was filed in conjunction with the World Trade Organization. The World Trade Organization (WTO) 2014 published a report that concluded that Australia had violated several obligations outlined in the Tobacco Plain Packaging Act. The panel concluded that Australia violated the Commerce Related Intellectual Property Rights (TRIPS) agreement because it was a barrier to the protection of intellectual property rights and unlawfully restricted commerce.

In response to the verdict, Australia has pledged to observe its terms. Despite this, the full execution of the verdict necessitates ample time and a well-organized procedure to change or modify the TPPA so that it is by the law. The implementation of this dispute settlement and its long-term repercussions are still underway, even though this procedure has led in a finding that leads to the conclusion that certain sections of Australia's Tobacco Plain Packaging Act violate the regulations. It is clear from this that the dispute settlement system of the World Trade Organization is extremely important when it comes to resolving disagreements regarding the interpretation and application of internationally traded regulations. (2012) According to A.M.

The purpose of this paper is to gain an understanding of the dynamics of the tobacco product trade dispute between Indonesia and Australia, which involves the World Trade Organization (WTO). Additionally, this research will outline the dispute resolution process followed by the WTO, which is the largest trading organization in the world, and investigate Indonesia's approach to conflict settlement.

2. RESEARCH METHOD

The research method used in this paper is through literature study. Data collection is done by searching and reading journals, articles or other literature relevant to the problem. This method allows for a comprehensive understanding of the topic and helps in gathering information from various sources. By analyzing and synthesizing the

information gathered, the paper aims to provide a detailed and well-informed discussion on the problem at hand. The literature study also helps in identifying gaps in existing research and provides a foundation for further exploration and analysis. (QuillBot, 2024)

3. RESULT AND DISCUSSION

Indonesia initiated legal proceedings against Australia under World Trade Organisation (WTO) agreements, including GATT 1994, TBT, and TRIPs, specifically targeting TRIPs requirements concerning trademarks. Indonesia contended that Australia's TPP Act failed to uphold the principle of National Treatment and hindered commerce without valid justifications. Furthermore, Indonesia contended that the TPP Act imposes limitations on the utilization of trademarks and violates the exclusive rights of trademark proprietors. Nevertheless, Australia was victorious in Panel Report DS467 by asserting that the TPP Act is important for safeguarding public health. Nevertheless, when examined through the lens of International Trade Law, the TPP Act is seen to be disadvantageous to tobacco manufacturers, particularly those from tobacco producing nations, since it may be seen as a limitation on the utilization of trademarks that does not comply with the TRIPs Agreement. Several lawsuits launched against Australia through the Dispute Settlement Body (DSB) by tobacco-producing nations including Honduras, Cuba, Dominican Republic, and Indonesia provide evidentiary support for this claim.

Australia The rationale behind Australia's implementation of the TPP Act on November 11, 2011, is to enhance the well-being of the Australian population by diminishing their inclination towards tobacco consumption. The aim of this objective is outlined in Article 3.1 of the TPP Act, which explicitly states that it is in the best interests of Australian public health. One other rationale for the implementation of the TPP Act is to meet Australia's responsibilities as a participant in the Framework Convention on Tobacco Control (FCTC). Article 5.3 of the FCTC mandates member states to reorganize policies concerning tobacco products, including the ban of tobacco product packaging that promotes products in a deceptive, inaccurate, or misleading manner regarding the anticipated impact or effect, particularly on human health. Australia intends to implement the TPP Act to govern the packaging of tobacco products, requiring them to be simple and devoid of brands or graphics. This measure aims to discourage Australians from using tobacco products. Plain packaging is designed to enhance the effectiveness of health warnings on packaging. Specifically, it aims to make health warnings the most prominent graphic feature on the packaging, instantly capturing the attention of consumers when scrutinizing tobacco product packaging.

The TPP Act explicitly addresses certain limitations, including constraints on the physical structure of packaging, limitations on the choice of colours for packaging, and limitations on trademarks. By Article 20 of the TPP Act, tobacco corporations are prohibited from using their own logo or mark design on the packaging of tobacco products. As a means of distinguishing one product from another, the packaging must only display the brand/company name and product variant name per the specified packaging requirements. Nevertheless, while tobacco businesses may incorporate their brand/company name on every package, the exact design of font type and size, the positioning of the brand/company name, and the placement of the variation type have been deliberately established to ensure a consistent appearance throughout all tobacco products. By Article 21 of the TPP Act and Article 21.4 of the Tobacco Plain Packaging Regulations 2011 (referred to as TPP Regulations), it is prohibited to position marks or

brands on the front cover of the packaging carton, except on the bottom, top, and bottom front surface. The reason for this is that the front surface of the pack cover has been specifically chosen as the position for the Pictorial Health Warning (PHW).

Signs or brands on retail packaging for cigarettes, roll-your-own tobacco (roll-your-own tobacco/hand rolling tobacco), and cigar tins (cigar tin and loose leaf tobacco tin) must be displayed horizontally, directly below the health warning that covers 75% of the front surface of the retail packaging label. For cigarettes and cigars packaged in cardboard, the mark or brand is positioned to the right of the health warning printed on 75% of the front surface of the cardboard. Where a tobacco product brand has multiple variations, the variant name must be positioned immediately below the brand name. Furthermore, brand names are prohibited from using bold or italic styles. Moreover, by Article 2.4 of the TPP Regulations, all tobacco product packaging is required to utilize the Lucida Sans typeface, both in shape and size.

An Examination of Dispute Settlement Behavior and Its Correlation with Dispute Relief.

Dispute Settlement Behavior pertains to the conduct of nations in managing and settling international conflicts, which can be classified into various primary patterns:

1. Adhering to Behavior Requiring Compliance with the Dispute Settlement Process:
Full Compliance: Certain governments opt to adhere completely to established conflict settlement processes, including diplomacy, mediation, arbitration, or international legal avenues like the International Court of Justice (ICJ). These nations uphold the decisions made and intend to adhere to the ultimate result.
Active Engagement: These countries not only adhere to protocols but also actively participate in the settlement process to achieve a mutually advantageous resolution and diffuse tensions.
2. Avoidance activities / Evasion of the Dispute Resolution Process:
Non-participation: Certain states may decline to participate in a formal dispute settlement procedure. Their lack of recognition of the jurisdiction of a certain conflict resolution organization or their perception that the procedure will not be advantageous to them.
Time-Stalling: These countries may employ strategies to prolong the dispute settlement process, such as submitting several appeals or using legal loopholes to impede progress.
3. Considering, Subsequently Avoiding Behaviour:
Selective Compliance: Some countries initially adhere to the dispute resolution process, but then refrain from implementing or complying with the ultimate result. This scenario may occur if the ultimate result is considered unfavourable or poses a threat to their national interests.
Combined Strategy: These countries may use a dual strategy by first engaging in the initial process to demonstrate goodwill or placate the international community, but thereafter declining to completely adhere to the final result.

The resolution of the Indonesia-Australia tobacco plain packaging laws issue was presented to the World Trade Organisation (WTO) session. Dispute settlement conduct refers to the actions taken by countries in addressing and resolving trade disputes through the adherence to established procedures or procedures. Both nations choose to pursue the procedural avenue of settling trade conflicts by initiating a hearing at the World Trade Organisation. The hearing in Australia concluded that the contentions made by Indonesia, the claimant country, were baseless as the simple packaging policy

did not infringe against the regulations of the GATT 1994, TBT, and TRIPS WTO. (Hutagalung and Tobing, 2020).

Contributing Factors to the Emergence of Disputes

The World Trade Organization established several agreements to govern international trade, including the Trade Related Intellectual Property Rights (TRIPS) agreement, to promote competitive and regulated international commerce. TRIPS comprises a set of regulations about intellectual property rights (IPR), encompassing copyright and other forms of production rights such as industrial designs, patents, trademarks, and similar related rights. The objective of implementing TRIPS is to enhance the safeguarding of intellectual property rights in the context of international commerce.

Australia has implemented the Tobacco Plain Packaging Act to promote public health by addressing the issue of cigarette consumption in the country through the establishment of uniform plain packaging for cigarettes and tobacco products. This conclusion is grounded on the principle of national treatment as outlined in GATT, which ensures equitable treatment of local and international products without causing harm to other countries (Hutagalung & Tobing, 2020). Nevertheless, this activity is seen to violate the WTO TRIPS criteria concerning the entitlement to use trademarks on goods in global commerce.

Following the introduction of this policy, five nations, namely Honduras, Ukraine, Dominican Republic, Cuba, and Indonesia, expressed their objections and made demands to the World Trade Organisation (WTO) against the enforcement of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) policy, which Australia allegedly rejected in the Tobacco Plain Packaging Act policy (Alessandra, A., 2013). The implementation of this policy is seen to have negative consequences for the import/export products of other nations, as it undermines the usage of cigarette or tobacco product brands, therefore reducing their product identity and competitiveness in the market.

Analysis of the Dispute's Outcome and Impact

Challenge Resolution: The Australian side emerged victorious in the 2018 tobacco plain packaging laws legal challenge. In response to the lawsuit filed by Indonesia, the World Trade Organisation (WTO) published a panel report stating that Australia's Tobacco Plain Packaging Act did not infringe against international trade regulations outlined in the General Agreement on Tariffs and Trade (GATT), the Agreement on Technical Barriers to Trade (TBT), and the Trade-Related Intellectual Property Rights Agreement (TRIPS).

This WTO declaration is grounded on compelling data presented by Australia that effectively disproves claims of discrimination in the trade of commodities, particularly cigarettes, by Indonesia. The persuasive and compelling factor that secured Australia's victory in the lawsuit are the implementation of policies aimed at alleviating mortality rates resulting from the consumption of tobacco products in Australia. Between 2001 and 2012, approximately 16.1% or around 2.8 million Australians aged 18-24 were determined to be active smokers. A notable decrease in smoking prevalence was observed in 2015, with over 21,000 smokers registered. However, the incidence of lung

cancer continued to increase daily and remained the primary cause of mortality in Australia. According to Betterhealth (2015),

Hence, the parliament must exert continuing efforts to decrease the mortality rate resulting from tobacco use within society. This can be achieved by formulating and executing legislation that imposes restrictions on tobacco products. Furthermore, this legislation also advances the objectives of the Australian Parliament's comprehensive strategy to guarantee a superior level of well-being for the population and accomplish the nation's aim of being identified as the healthiest country by 2020. Fahri (2018)

The Tobacco Plain Packaging Act is considered to comply with trade agreements. The implementation of the TPP Act is deemed to comply with the safeguarding of intellectual property outlined in the trade agreements of the WTO and TRIP, as determined by the plaintiff country. The World Trade Organisation (WTO) recognises the pressing issue of Australia's increasing mortality rate and the legislative measures taken by the Australian Parliament to safeguard the public from the detrimental effects of tobacco use. This matter is deemed more crucial and urgently addressed due to its connection to Human Rights.(Setiadi, 2019)

The Australian Parliament's decision ratification is regarded as having successfully met the objectives of the FCTC. The Framework Convention on Tobacco Control (FCTC) is a global agreement on public health that has been deliberated and ratified by member nations of the World Health Organisation (WHO). The convention was formulated through talks among WHO member countries to safeguard future generations against the adverse consequences of tobacco products. The TPP Act policy is seen as a means of adhering to the mandates of the Australian parliament and fulfilling its responsibilities as a member state of the FCTC. (Syahmin and Fidelia, 2017)

Despite facing challenges from several nations, particularly major tobacco-producing countries worldwide, the World Trade Organisation (WTO) considers the policies enacted by the Australian Parliament as a means to safeguard the citizens of the country. Acknowledging the escalating incidence of premature mortality resulting from tobacco product usage compels the government to adopt measures aimed at mitigating the mortality rate. Hence, the Tobacco Plain Packaging Act regulations were established in Australia and have been enforced since 2012.

Impact of the Dispute:

Indonesia as one of the world's largest tobacco producers considers the enactment of the Tobacco Plain Packaging Act to hurt Indonesia. Tobacco products are the largest contributor to state revenue in Indonesia, the reduction of export markets certainly affects the decline in state revenue. In the first year of the enactment of the TPP Act, exports of Indonesian tobacco products to Australia fell by around 76% and Indonesia is estimated to lose up to trillions of rupiah in revenue. In addition, the reduction in export commodities also has an impact on the loss of jobs for workers who depend on the tobacco industry. (Nugraha, 2022)

But it is different in Australia. The enactment of the TPP Act has had a positive impact on the country. Through the enactment of the TPP Act, the Australian Parliament has succeeded in reducing the number of young smokers and premature deaths due to the consumption of tobacco products. This proves that the implementation of the policy helps to reduce the attractiveness of tobacco products and encourages public awareness to consume tobacco products carefully. The success of the Australian parliament in reducing premature deaths from tobacco consumption has also had a global impact. This is evidenced by other developed countries implementing TPP Act policies such as the

United Kingdom and France which implemented the Tobacco and Related Products Regulations policy in 2016, followed by Ireland implementing Public Health Standardized Packaging of Tobacco in 2017 and Hungary implementing the Tobacco Plain Packaging Act in 2019. (Angelia, 2022)

4. CONCLUSION

In the Tobacco Plain Packaging Act case, Indonesia filed a lawsuit against Australia, using World Trade Organisation (WTO) agreements including GATT 1994, TBT, and TRIPs. The lawsuit specifically targeted the clauses of TRIPs relevant to trademarks. By the notion of Dispute Settlement Behavior, which pertains to the conduct of nations in handling and settling international conflicts, the two conflicting nations adhere to the Dispute Settlement Process. Both nations choose to pursue the procedure of settling trade claims by initiating a legal proceeding at the World Trade Organisation.

Australia emerged victorious in the 2018 tobacco plan package regulation debate. In response to the lawsuit filed by Indonesia, the World Trade Organisation (WTO) published a panel report stating that Australia's Tobacco Plain Packaging Act did not infringe against international trade regulations outlined in the General Agreement on Tariffs and Trade (GATT), the Agreement on Technical Barriers to Trade (TBT), and the Trade-Related Intellectual Property Rights Agreement (TRIPS). Given its status as one of the world's major tobacco producers, Indonesia views the implementation of the Tobacco Plain Packaging Act as having a detrimental effect on the country.

5. REFERENCE

- Angelia, I. R. (2022). PENGARUH PENERAPAN TOBACCO PLAIN PACKAGING ACT 2011 DI AUSTRALIA TERHADAP INVESTOR PRODUK TEMBAKAU. *Jurnal Belia Ac Pacis (Jurnal Hukum Internasional)*, 8(2), 109–119.
- Fahri, M. A. (2018). Kemenangan Australia dalam Tuntutan Anggota WTO Mengenai Kebijakan Kemasan Polos pada Bungkus Rokok dan Produk Tembakau. *Journal of International Relations*, 4(3), 499–508.
- Nugraha, D. A. (2022). DAMPAK KEBIJAKAN THE TOBACCO PLAIN PACKAGING ACT TERHADAP DAMPAK KEBIJAKAN THE TOBACCO PLAIN PACKAGING ACT TERHADAP A . Latar Belakang merupakan makhluk sosial , negarapun begitu . Sektor yang sangat penting bagi negara untuk menjaga kesejahteraan rakyat. January, 0–17.
- Setiadi, W. (2019). Penolakan Gugatan Indonesia Oleh WTO Atas Kebijakan Australia Mengenai Kemasan Rokok Polos. *Esensi Hukum*, 1(1), 12–23. <https://doi.org/10.35586/esensihukum.v1i1.11>
- Syahmin, A., & Fidelia. (2017). Analisis Tentang Tobacco Plainpackaging Act in Australia Dan Implikasinya Terhadap Perdagangan Internasional Indonesia. *Simbur Cahaya*, 24(3), 4879–4889.
- Hutagulung, J. M., & Tobing, C. I. (2020). PENYELESAIAN SENGKETA KEBIJAKAN PRODUK KEMASAN POLOS PRODUK ROKOK AUSTRALIA DALAM WTO, 20(1), 1–23.

Putranto, A. N., & Sugito. (2023a). Penyelesaian Kasus Sengketa Kemasan Rokok Polos Australia di World Trade Organization. *Jurnal Hukum & Pembangunan Masyarakat*, 14(3), 25–30.

Artikel https://gamma.app/docs/Between-Law-and-Politics-Explaining-International-Dispute-Settlement-8wj9jlyzrl9g12x?__cf_chl_tk=xqbq3o6a70HgtCn.N6ZGPPLh3RKLrygUs1xy05qOp1g-1720175486-0.0.1.1-5161&mode=doc diakses pada 4 juli 2024

<https://e-journal.unair.ac.id/MI/article/download/27285/26469/249114> Analisis Penerapan Kebijakan Tobacco Plain Packaging (Perbandingan Hukum Australia, Inggris, dan Belanda)

<https://bbs.binus.ac.id/ibm/2024/04/indonesia-menggugat-australia-ke-wto-atas-kemasan-rokok-polos/>